L.N. 139 of 2020

Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

Contents

Implementation Rules for Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region

(Made by the Chief Executive in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region under the third paragraph of Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region)

Preamble

WHEREAS—

(1) at its Twentieth Meeting on 30 June 2020, the Standing Committee of the Thirteenth National People's Congress, after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region and the Government of the Hong Kong Special Administrative Region, decided to add the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (a translation of "《中華人民共和國香港特別行政區維護國家安全法》") to the list of national laws in Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China;

(2) on 30 June 2020, the Chief Executive gave notice that the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region applies from 11 p.m. on 30 June 2020 in the Hong Kong Special Administrative Region;

(3) the first paragraph of Article 43 of the Law of the People's Republic of China on Safeguarding National

Security in the Hong Kong Special Administrative Region provides, to the effect that, when handling cases concerning offence endangering national security, the department for safeguarding national security of the Police Force of the Hong Kong Special Administrative Region may take measures that law enforcement authorities, including the Hong Kong Police Force, are allowed to apply under the laws in force in the Hong Kong Special Administrative Region in investigating serious crimes, and may also take the following measures—

(a) search of premises, vehicles, vessels, aircraft and other relevant places and electronic devices that may contain evidence of an offence;

(b) ordering any person suspected of having committed an offence endangering national security to surrender travel documents, or prohibiting the person concerned from leaving the Region;

(c) freezing of, applying for restraint order, charging order and confiscation order in respect of, and forfeiture of property used or intended to be used for the commission of the offence, proceeds of crime, or other property relating to the commission of the offence;

(d) requiring a person who published information or the relevant service provider to delete the information or provide assistance;

(e) requiring a political organization of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, or an agent of authorities or a political organization of a foreign country or outside the mainland, Hong Kong and Macao of the People's Republic of China, to provide information;

(f) upon approval of the Chief Executive, carrying out interception of communications and conducting covert surveillance on a person who is suspected, on reasonable grounds, of having involved in the commission of an offence endangering national security; and

(g) requiring a person, who is suspected, on reasonable grounds, of having in possession information or material relevant to investigation, to answer questions and furnish such information or produce such material; and

(4) the third paragraph of Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region authorizes the Chief Executive, in conjunction with the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region, to make relevant implementation rules for the purpose of applying the measures under the first paragraph of that Article:

NOW, THEREFORE, these Implementation Rules are made as follows—

1. Commencement

These Implementation Rules come into operation on 7 July 2020.

2. Schedules

(1) A police officer may, in accordance with Schedule 1, exercise the power to search places for evidence.

(2) A police officer may, in accordance with Schedule 2, exercise the power to restrict a person suspected of having committed an offence endangering national security and under investigation from leaving Hong Kong.

(3) The Secretary for Justice, the Secretary for Security or a police officer may, in accordance with Schedule 3, exercise the power to freeze, restrain, confiscate and forfeit property relating to the commission of an offence endangering national security.

(4) A police officer may, in accordance with Schedule 4, exercise the power to remove messages endangering national security, and require a platform service provider, a hosting service provider and a network service provider to provide assistance.

(5) The Secretary for Security and the Commissioner of Police may, in accordance with Schedule 5, exercise the power to require a foreign or Taiwan political organization, or a foreign or Taiwan agent, to provide information by reason of activities concerning Hong Kong.

(6) An officer of the Police Force may, in accordance with Schedule 6, apply for the authorization to conduct interception of communications and covert surveillance for preventing or detecting offences endangering national security or for protecting national security.

(7) A police officer may, in accordance with Schedule 7, exercise the power to require a person to furnish information and produce material.

3. Designated judge

The magistrate, or the judge of the District Court or the Court of First Instance of the High Court, who handles an application under these Implementation Rules must be a designated judge under Article 44 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

4. Authentic text of Implementation Rules

The Chinese text of these Implementation Rules is an authentic text, and these Implementation Rules are to be construed accordingly. The English translation text is for reference only.

Schedule 1

[r. 2]

Rules Relating to Search of Places for Evidence

1. Interpretation

In this Schedule—

place (地方) means any place, and includes—

(a) any vehicle, vessel, aircraft, hovercraft or other conveyance;

(b) any tent or structure (whether or not movable or offshore); and

(c) any electronic equipment;

specified evidence (指明證據) means anything that is or contains, or that is likely to be or contain, evidence of an offence endangering national security.

2. Magistrate's warrants

(1) A police officer may, for investigation of an offence endangering national security, apply to a magistrate by information on oath for a warrant under this section in relation to the place specified in the information.

(2) A magistrate may issue a warrant authorizing a police officer with such assistants as may be necessary to enter and search any place if the magistrate is satisfied by information on oath that there is reasonable ground for suspecting that any specified evidence is in the place.

(3) A warrant issued under subsection (2) authorizes the police officer to—

(a) enter (and by the use of reasonable force if necessary) and search the place;

(b) inspect, examine, search, seize, remove and detain anything in the place that the officer reasonably believes to be specified evidence; and

(c) detain any person found in the place until the place has been searched.

3. Circumstances in which magistrate's warrants are not necessary

(1) If a police officer not below the rank of Assistant Commissioner of Police is satisfied that—

(a) there is reasonable ground for suspecting that any specified evidence is in a place;

(b) there is reasonable ground for believing that the evidence is necessary for any of the matters specified in subsection (2); and

(c) for any reason it would not be reasonably practicable to obtain a warrant,

the police officer, or another police officer authorized by the police officer, may exercise the power under section 2(3) of this Schedule for investigation of an offence endangering national security without a warrant.

(2) The matters specified for the purposes of subsection (1)(b) are—

(a) investigation of an offence endangering national security;

(b) procurement and preservation of evidence of an offence endangering national security;

(c) protection of the safety of any persons.

Schedule 2

[r. 2]

Rules Relating to Restriction on Persons under Investigation from Leaving Hong Kong

1. Interpretation

In this Schedule—

travel document (旅行證件) means a passport or other document establishing the identity or nationality of a holder.

2. Surrender of travel documents

(1) A magistrate may, on the application ex parte of a police officer, by written notice require a person who is the subject of an investigation in respect of an offence endangering national security reasonably suspected to have been committed by the person to surrender to the police officer any travel document in the person's possession.

(2) A notice under subsection (1) must be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served must comply with the notice immediately.

(4) Subject to subsection (8), a person to whom a notice under subsection (1) is addressed must not leave Hong Kong, whether or not the notice has been served on the person under subsection (2), before the expiry of a period of 6 months from the date of the notice unless—

(a) an application made under section 3(1) of this Schedule for the return of a travel document is granted; or

(b) an application made under section 4(1) of this Schedule for permission to leave Hong Kong is granted.

(5) If a person on whom a notice under subsection (1) has been served fails to comply with the notice immediately, the person may be arrested and taken before a magistrate by a police officer.

(6) Where a person is taken before a magistrate under subsection (5), the magistrate must, unless the person immediately complies with the notice under subsection (1) or satisfies the magistrate that the person does not possess a travel document, by warrant commit the person to prison there to be safely kept—

(a) until the expiry of the period of 28 days from the date of the person's committal to prison; or

(b) until the person complies with the notice under subsection (1) and a magistrate, by order, orders and directs the Commissioner of Correctional Services to discharge the person from prison (which order is sufficient warrant for the Commissioner of Correctional Services so to do),

whichever occurs first.

(7) Subject to subsection (8), a travel document surrendered to a police officer in compliance with a notice under subsection (1) may be detained for a period of 6 months from the date of the notice unless an application made under section 3(1) of this Schedule for the return of the travel document is granted.

(8) The period of 6 months referred to in subsections (4) and (7) may be extended for a further period of 3 months if a magistrate, on application by the police officer, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such extension. However, a magistrate must not hear an application under this subsection unless reasonable notice of the application has been given by the police officer to the person to whom the relevant notice is addressed.

(9) All proceedings before a magistrate under this section must be conducted in chambers.

(10) A notice under subsection (1) which has been served in accordance with subsection (2) and complied with must not be revoked or withdrawn.

3. Return of travel documents

(1) A person who has surrendered a travel document under section 2 of this Schedule may at any time make application in writing, either to the Commissioner of Police or to a magistrate or both for its return, and every such application must contain a statement of the grounds on which it is made.

(2) A magistrate must not consider an application made under subsection (1) unless the magistrate is satisfied that reasonable notice in writing of it has been given to the Commissioner of Police.

(3) The Commissioner of Police or a magistrate may only grant an application made under subsection (1) if the Commissioner of Police or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 2(1) of this Schedule, a refusal to grant the

application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section—

(a) the applicant may be required to—

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) the applicant or surety may be required to deposit such property or document of title with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) is to be subject to the conditions that—

(a) the applicant must further surrender the applicant's travel document to a police officer at such time as may be specified; and

(b) the applicant must appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong as may subsequently be further specified.

(6) An application under this section may be granted either without conditions or subject to the conditions that—

(a) the applicant must further surrender the applicant's travel document to a police officer at such time as may be specified; and

(b) the applicant must appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong as may subsequently be further specified.

(7) Where a travel document is returned to the applicant under this section subject to a condition imposed under subsection (5)(a) or (6)(a), then after the time specified under that subsection, the provisions of section 2(4) of this Schedule continue to apply in respect of the applicant and the provisions of section 2(7) of this Schedule continue to apply in respect of the travel document surrendered by the applicant pursuant to the condition as if no return had been made to the applicant under this section.

(8) Proceedings before a magistrate under this section—

(a) must be conducted in chambers; and

(b) are deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals) applies, with the necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section must be specified by notice in writing served personally on the applicant.

4. Permission to leave Hong Kong

(1) Without prejudice to section 3 of this Schedule, a person on whom a notice under section 2(1) of this Schedule is served may at any time make application in writing to the Commissioner of Police or to a magistrate or both for permission to leave Hong Kong, and every such application must contain a statement of the grounds on which it is made.

(2) A magistrate must not consider an application made under subsection (1) unless the magistrate is satisfied that reasonable notice in writing of it has been given to the Commissioner of Police.

(3) The Commissioner of Police or a magistrate may only grant an application made under subsection (1) if the Commissioner of Police or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in section 2(1) of this Schedule, a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section—

(a) the applicant may be required to—

(i) deposit such reasonable sum of money with such person as may be specified;

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified;

(b) the applicant or surety may be required to deposit such property or document of title with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in subsection (4) is to be subject to a condition that the applicant must appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong as may subsequently be further specified.

(6) An application under this section may be granted either without condition or subject to a condition that the applicant must appear at such time and place in Hong Kong as may be specified and at such other time and place in Hong Kong as may subsequently be further specified.

(7) Where a person is permitted to leave Hong Kong under this section subject to a condition imposed under subsection (5) or (6), then after the time specified under that subsection or (if applicable) after the last of the times so specified, the provisions of section 2(4) of this Schedule continue to apply in respect of the person as if the person had not been permitted to leave Hong Kong under this section.

(8) Proceedings before a magistrate under this section—

(a) must be conducted in chambers; and

(b) are deemed to be proceedings which a magistrate has power to determine in a summary way within the meaning of sections 105 and 113(3) of the Magistrates Ordinance (Cap. 227) and, accordingly, Part VII of that Ordinance (which relates to appeals)

applies, with the necessary modifications, to appeals against an order of a magistrate under this section.

(9) Anything to be specified in respect of an applicant under this section must be specified by notice in writing served personally on the applicant.

5. Further provisions relating to security, appearance, etc.

(1) Where a person granted an application under section 3 of this Schedule fails to comply with the requirement of any condition imposed under that section—

(a) the person may be arrested and dealt with in the same way that a person who fails to comply with a notice under section 2(1) of this Schedule may be arrested and dealt with under section 2(5) and (6) of this Schedule; and

(b) any deposit made or recognizance entered into under section 3 of this Schedule may be forfeited by a magistrate on application by a police officer or under section 65 (which relates to the enforcement of recognizances) of the Magistrates Ordinance (Cap. 227).

(2) If a person granted an application under section 4 of this Schedule fails to comply with the requirement of any condition imposed under that section, any deposit made or recognizance entered into under that section may be forfeited by a magistrate on application by a police officer or under section 65 of the Magistrates Ordinance (Cap. 227).

(3) Without prejudice to section 65 of the Magistrates Ordinance (Cap. 227), if a magistrate declares or orders the forfeiture of a recognizance under this section, the declaration or order may, on the application of the Commissioner of Police, be registered in the Court of First Instance, and on the registration, the provisions of sections 110, 111, 112, 113 and 114 (which relate to the enforcement of recognizances) of the Criminal Procedure Ordinance (Cap. 221) apply to and in relation to the recognizance.

Schedule 3

[r. 2 & Sch. 7]

Rules Relating to Freezing, Restraint, Confiscation and Forfeiture of Property

1. Interpretation

(1) In this Schedule—

authorized officer (獲授權人員) means a legal officer authorized in writing by the Secretary for Justice for the purposes of any application under this Schedule;

defendant (被告人) means a person against whom proceedings have been instituted for an offence endangering national security (whether or not the person has been convicted of that offence);

offence related property (罪行相關財產) means—

(a) the property of a person—

(i) who commits, or attempts to commit, an offence endangering national security; or

(ii) who participates in or facilitates the commission of an offence endangering national security; or

(b) any property that is intended to be used or was used to finance or otherwise assist the commission of an offence endangering national security;

property (財產) includes movable property and immovable property as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);

realisable property (可變現財產) has the meaning given by section 12 of the Organized and Serious Crimes Ordinance (Cap. 455) with the following modifications—

(a) a reference in that section to "specified offence" or "organized crime" is a reference to "offence endangering national security";

(b) a reference in that section to "this Ordinance" is a reference to "this Schedule";

(c) a reference in that section to "defendant" has the meaning as defined by this subsection; and

(d) a reference in subsection (9) of that section to proceedings are instituted is to be construed in accordance with subsection (2).

(2) In this Schedule, a reference to proceedings for an offence are instituted against a person includes a reference to a person having been arrested for an offence (whether or not the person is released on bail).

(3) For the purposes of this Schedule—

(a) a person's proceeds of an offence endangering national security are—

(i) any payments or other rewards received by the person at any time in connection with the commission of an offence endangering national security;

(ii) any property derived or realized, directly or indirectly, by the person from any of the payments or other rewards; and

(iii) any pecuniary advantage obtained in connection with the commission of an offence endangering national security; and

(b) the value of the person's proceeds of an offence endangering national security is the aggregate of the values of—

(i) the payments or other rewards;

(ii) that property; and

(iii) that pecuniary advantage.

(4) For the purposes of this Schedule, a person who has at any time (whether before or after the commencement of this Schedule) received any payment or other reward in connection with the commission of an offence endangering national security has benefited from that offence.

(5) References in this Schedule to property received in connection with the commission of an offence endangering national security include a reference to property received both in that connection and in some other connections.

(6) Property is held by any person if the person holds any interest in it.

2. Property to which this Schedule applies

This Schedule applies to property whether it is situated in Hong Kong or elsewhere.

3. Freezing of property

(1) Where the Secretary for Security has reasonable grounds to suspect that any property held by any person is offence related property, the Secretary may, by notice in writing specifying the property, direct that a person must not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.

(2) If the Secretary for Security ceases to have reasonable grounds to suspect that the property specified in the notice, or part of the property, is offence related property, or the Court of First Instance has granted an application under section 4(1) of this Schedule which relates to the property or part of the property, then the Secretary must, as soon as is reasonably practicable, by notice in writing revoke the notice or a relevant part of it.

(3) Subject to subsection (4), the validity period of the notice must not exceed 2 years unless an application for restraint order, charging order, confiscation order or forfeiture order has been made in relation to the property, and the application is pending.

(4) The Secretary for Security may make an application to the Court of First Instance for extending the validity period of the notice mentioned in subsection (3). The Court of First Instance must not grant the extension unless it is satisfied that the investigation of the offence endangering national security, to which the notice relates, could not reasonably have been completed before the expiry of the validity period of the notice. An extension must not exceed such time as is reasonably necessary for the conduct of the investigation (the Secretary may further apply for extension if necessary).

(5) The notice must be served on the person holding the property concerned (***recipient***) and must require the recipient to send a copy of the notice without delay to each person, if any, whose property it is, or for or on behalf of whom the property is held.

(6) If any property specified in the notice involves immovable property, the notice is taken to be an instrument affecting land and is registrable under the Land Registration Ordinance (Cap. 128) in the way that the Land Registrar considers appropriate.

(7) If the Secretary for Security has reasonable cause to suspect that any property specified in the notice will be removed from Hong Kong, the Secretary may in the notice—

(a) give a direction that a police officer may, for the purpose of preventing the property from being removed from Hong Kong, seize the property;

(b) give directions in accordance with which the property so seized is to be dealt with.

(8) A person who knowingly contravenes a notice under subsection (1) commits an offence and is liable on conviction on indictment to a fine and to imprisonment for 7 years.

(9) A person who, without reasonable excuse, contravenes a requirement under subsection (5) commits an offence and is liable on conviction to a fine of $100,000 and to imprisonment for 3 months.

4. Applications to Court of First Instance

(1) Where a notice has been served under section 3 of this Schedule, then—

(a) any person by, for or on behalf of whom any property specified in the notice is held, or any other person in respect of whom the Court of First Instance is satisfied that the person is affected by the notice, may make an application to the Court of

First Instance for the notice to be revoked to the extent that it relates to the property so specified; and

(b) the Court of First Instance must grant the application unless it is satisfied that there are reasonable grounds to suspect that the property is offence related property.

(2) Any person affected by a notice served under section 3 of this Schedule (including a person affected by the operation of that section) may make an application to the Court of First Instance for the grant or variation of a licence mentioned in section 3(1) of this Schedule, or the revocation or variation of a direction mentioned in section 3(7) of this Schedule. The Court of First Instance must not grant the application unless it is satisfied that it is reasonable in all the circumstances of the case to do so.

(3) A person who makes an application under subsection (1) or (2) must give notice of the application to the Secretary for Justice and any other person affected in accordance with the rules of court that are applicable under section 15 of this Schedule.

(4) The Secretary for Security must, as soon as is reasonably practicable, cause a determination made by the Court of First Instance under this section to be implemented.

5. Disclosure of knowledge or suspicion that property is offence related property etc.

(1) Where a person knows or suspects that any property is offence related property, then the person must disclose to a police officer the information or other matter—

(a) on which the knowledge or suspicion is based; and

(b) as soon as is reasonably practicable after that information or other matter comes to the person's attention.

(2) If a person who has made a disclosure referred to in subsection (1) does any act relating to financing or assisting the commission of an offence endangering national security, and the disclosure relates to that act, the person does not commit that offence if the condition specified in paragraph (a) or (b) is satisfied—

(a) the disclosure is made before the person does the act and the person does the act with the consent of a police officer;

(b) the disclosure is made—

(i) after the person does the act;

(ii) on the person's initiative; and

(iii) as soon as it is reasonably practicable for the person to make the disclosure.

(3) In the case of a person who was in employment at the relevant time, this section has effect in relation to disclosures to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as it has effect in relation to disclosures to a police officer.

(4) Where a person knows or suspects that a disclosure has been made under subsection (1) or (3), the person must not disclose to another person any information or other matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.

(5) Information obtained under or by virtue of a disclosure referred to in subsection (1) may be disclosed—

(a) by any police officer to the Department of Justice and other police officers for the purpose of preventing and suppressing acts or activities endangering national security; and

(b) by any police officer to the authorities or persons responsible for investigating or preventing acts or activities endangering national security, or handling the disclosure of knowledge or suspicion that any property is offence related property, of any place outside Hong Kong which the police officer considers appropriate, for the purpose of preventing and suppressing acts or activities endangering national security.

(6) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of $50,000 and to imprisonment for 3 months.

(7) A person who contravenes subsection (4) commits an offence and is liable on conviction on indictment to a fine and to imprisonment for 3 years.

(8) In proceedings against a person for an offence under subsection (7), it is a defence to prove—

(a) that the person did not know or suspect that the disclosure concerned was likely to be prejudicial in the way referred to in subsection (4); or

(b) that the person had lawful authority or reasonable excuse for making that disclosure.

6. Applications for restraint orders and charging orders

(1) The Secretary for Justice or an authorized officer may make an application to the Court of First Instance for a restraint order or charging order, subject to the following conditions—

(a) any of the following circumstances is present—

(i) proceedings have been instituted against the defendant for an offence endangering national security, or an application under section 9 of this Schedule for a confiscation order to be made against the defendant or an application under section 10 of this Schedule for variation of a confiscation order has been made, and the proceedings have not, or the application has not been concluded;

(ii) a person (***defendant***) has been arrested for an offence endangering national security, and the Court of First Instance is satisfied that, in all the circumstances of the case, there is reasonable ground to believe that the defendant may be charged with the offence after further investigation is carried out;

(iii) the Court of First Instance is satisfied that a person (***defendant***) is to be charged with an offence endangering national security; and

(b) the Court of First Instance is satisfied that there is reasonable ground to believe—

(i) if an application for variation of a confiscation order has been made—that the Court of First Instance will be satisfied of the matters specified in section 10(2) of this Schedule; or

(ii) in any other case—that the defendant has benefited from that offence.

(2) A restraint order or charging order may be made on an ex parte application to the Court of First Instance in chambers.

(3) An application for the discharge or variation of a restraint order or charging order may be made by any person affected by it to the Court of First Instance. The Court of First Instance must not grant the application unless it is satisfied that it is reasonable in all the circumstances of the case to do so.

(4) A police officer may, by notice in writing served on a person who holds any realisable property the subject of a restraint order or charging order, require the person to deliver to the police officer, to the extent that it is reasonably practicable to do so, documents, or copies of documents, or any other information (in whatever form), in the person's possession or control which may assist the police officer to determine the value of the property.

(5) A person who receives a notice under subsection (4) must, as soon as is reasonably practicable after receipt of the notice, comply with the notice to the extent that it is reasonably practicable to do so taking into account the nature of the realisable property concerned.

(6) Any person who contravenes subsection (5) commits an offence and is liable on conviction to a fine of $50,000 and to imprisonment for 1 year.

(7) A person who knowingly deals in any realisable property in contravention of a restraint order or charging order commits an offence.

(8) A person who commits an offence under subsection (7) is liable on conviction on indictment to a fine of $500,000 or to the value of the realisable property the subject of the restraint order or charging order concerned which has been dealt with in contravention of that order, whichever is the greater, and to imprisonment for 5 years.

7. Restraint orders

(1) The Court of First Instance may by a restraint order prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply to all realisable property held by a person specified in the order, whether the property is described in the order or not, or is transferred to the person after the making of the order.

(3) Where the Court of First Instance has made a restraint order, the Court of First Instance may at any time appoint a receiver—

(a) to take possession of any realisable property; and

(b) in accordance with the directions of the Court of First Instance, to manage or otherwise deal with any property in respect of which the receiver is appointed,

subject to such conditions and exceptions as may be specified by the Court of First Instance; and may require any person having possession of the property to give possession of it to the receiver.

(4) Where the Court of First Instance has made a restraint order, an authorized officer may, for the purpose of preventing any realisable property being removed from Hong Kong, seize the property.

(5) If a restraint order concerns immovable property, the order is taken to be an instrument affecting land and is registrable under the Land Registration Ordinance (Cap. 128) in the way that the Land Registrar considers appropriate.

8. Charging orders in respect of land, securities, etc.

(1) The Court of First Instance may make a charging order on realisable property for securing the payment to the Government—

(a) where a confiscation order has not been made—of an amount equal to the value from time to time of the property charged; and

(b) in any other case—of an amount not exceeding the amount payable under the confiscation order.

(2) A charging order is an order made under this section imposing on any realisable property that is specified in the order a charge for securing the payment of money to the Government.

(3) A charge may be imposed by a charging order only on—

(a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Schedule—

(i) in any asset of a kind specified in subsection (4); or

(ii) under any trust; or

(b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.

(4) The kind of asset mentioned in subsection (3)(a)(i) is any of the following—

(a) land in Hong Kong;

(b) Government stock;

(c) stock of any body incorporated in Hong Kong;

(d) stock of any body incorporated outside Hong Kong or of any state or territory outside Hong Kong, being stock registered in a register kept at any place within Hong Kong;

(e) units of any unit trust in respect of which a register of the unit holders is kept at any place within Hong Kong.

(5) The Court of First Instance may provide for the charge to extend to any interest, dividend or other distribution payable and any bonus issue in respect of the asset concerned.

(6) A charging order is registrable and enforceable in accordance with the laws of Hong Kong.

9. Confiscation orders

(1) The Secretary for Justice or an authorized officer may make an application to the Court of First Instance or the District Court for a confiscation order if—

(a) in proceedings before the Court of First Instance or the District Court a defendant is to be sentenced in respect of an offence endangering national security and has not previously been sentenced in respect of the defendant's conviction for the offence concerned; or

(b) proceedings for an offence endangering national security have been instituted against a defendant but have not been concluded because the defendant has died or absconded.

(2) Where subsection (1)(a) is applicable, the court must first impose on the defendant such period of imprisonment or detention (if any) as is appropriate and make such order or orders (other than a confiscation order) in relation to sentence as is appropriate in accordance with the laws of Hong Kong.

(3) Where subsection (1)(b) is applicable, the court must first be satisfied that—

(a) the defendant has died; or

(b) the defendant has absconded for not less than 6 months, and—

(i) if the exact whereabouts of the defendant are known—reasonable steps have been taken to give notice to that defendant and to obtain the return of that defendant to Hong Kong but have been unsuccessful; or

(ii) if the exact whereabouts of the defendant are not known—reasonable steps have been taken to ascertain the defendant's whereabouts and notice of those proceedings, addressed to that defendant, has been published in a Chinese language newspaper, and an English language newspaper, circulating generally in Hong Kong,

and the court, having regard to all relevant matters before it, is also satisfied that the defendant could have been convicted in respect of the offence concerned.

(4) The court must then determine whether the defendant has benefited from the offence endangering national security of which the defendant is convicted or could have been convicted.

(5) If the court determines that the defendant has benefited from the offence endangering national security of which the defendant is convicted or could have been convicted, the court must determine the amount to be recovered in the defendant's case by virtue of this section. The amount to be recovered is the amount the court assesses to be the value of the defendant's proceeds of the offence endangering national security which the defendant has committed, but if the court is satisfied that the amount that might be realized at the time the confiscation order is made is less than the amount the court assesses to be such value, the court may determine the amount to be recovered to be—

(a) the amount appearing to the court to be so realized; or

(b) if it appears to the court (on the information available to it at the time) that the amount that might be so realized is nil—a nominal amount.

(6) After determining the amount to be recovered, the court must then make a confiscation order, ordering the defendant to pay that amount within a fixed period.

(7) The court must not fix a period longer than 6 months unless it is satisfied that there are special circumstances which justify it doing so.

(8) The court must also in the confiscation order fix a term of imprisonment, in accordance with the following Table, which the defendant is to serve if any of that amount is not duly paid within that period (the terms of imprisonment set out in column 2 of the Table are the maximum terms of imprisonment applicable respectively to the amounts set out in column 1 of the Table opposite to the terms).

Table

	Column 1	Column 2
	Amount payable	Term of imprisonment
	An amount not exceeding $200,000	1 year
	An amount exceeding $200,000 but not exceeding $500,000	18 months
	An amount exceeding $500,000 but not exceeding $1,000,000	2 years
	An amount exceeding $1,000,000 but not exceeding $2,500,000	3 years
	An amount exceeding $2,500,000 but not exceeding $10,000,000	5 years
	An amount exceeding $10,000,000	10 years

(9) At the end of each day's sitting of the court, the Registrar of the High Court or the District Court (as the case may be) must cause to be delivered to the Commissioner of Correctional Services a certificate in respect of each term of imprisonment fixed under this section for the Commissioner to carry into effect the term of imprisonment fixed under this section in respect of that defendant.

(10) An authorized officer or the defendant may, in respect of an application for confiscation order, tender to the court a statement of matters relevant to the application.

(11) The amount to be recovered under a confiscation order is to be treated as a judgment debt under the laws of Hong Kong, and as such, interest may accrue, and the amount of the interest is to be treated, for the purposes of enforcement, as part of the amount to be recovered from the defendant under the confiscation order.

10. Variation of confiscation orders

(1) An authorized officer or the defendant (or, in the case of a defendant who has died, the defendant's personal representative) may make an application for variation in respect of a confiscation order. If the Court of First Instance is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, it must make an order that such lesser amount as the court thinks just in all the circumstances of the case be substituted, and that a shorter term fixed in accordance with section 9(8) of this Schedule be substituted.

(2) An authorized officer may make an application for variation in respect of a confiscation order. If the Court of First Instance is satisfied that—

(a) the value of the defendant's proceeds of any offence endangering national security was greater than the value of the defendant's proceeds of the offence assessed by the Court of First Instance or the District Court, as the case may be, at the time of the making of the confiscation order;

(b) an authorized officer becomes aware of realisable property, the existence of which was not known to the officer at the time of the making of the confiscation order; or

(c) the amount realized from the defendant's proceeds of that offence is greater than the amount the Court of First Instance or the District Court, as the case may be, assessed to be the amount to be recovered under the confiscation order,

the court must make an order that such greater amount as the court thinks just in all the circumstances of the case be substituted, and that a greater term fixed in accordance with section 9(8) of this Schedule be substituted.

11. Realisation of property and application

(1) For the purposes of enforcing any confiscation order that has been made, the Court of First Instance may appoint a receiver in respect of realisable property, and order or empower the receiver to exercise the powers similar to those under section 17 of the Organized and Serious Crimes Ordinance (Cap. 455) (with the necessary modifications).

(2) The Court of First Instance, the Registrar of the High Court or the District Court (as the case may be) and the receiver have the powers, obligations and protection similar to those under sections 18, 19 and 24 of the Organized and Serious Crimes Ordinance (Cap. 455) (with the necessary modifications).

12. Bankruptcy of defendant and winding up of company holding other realisable property

(1) Where—

(a) a person who holds realisable property is adjudged bankrupt; or

(b) realisable property is held by a company and an order for the winding up of the company has been made or a resolution has been passed by the company for voluntary winding up,

the provisions under sections 21, 22 and 23 of the Organized and Serious Crimes Ordinance (Cap. 455) apply with the necessary modifications.

(2) The references in those provisions to restraint order, charging order and confiscation order and relevant provisions are to be understood as references to restraint order, charging order and confiscation order and relevant provisions in this Schedule.

13. Forfeiture of offence related property

(1) The Court of First Instance may, if satisfied on an application made by or on behalf of the Secretary for Justice that any property specified in the application is offence related property—

(a) mentioned in paragraph (a) of the definition of ***offence related property*** in section 1(1) of this Schedule and which also—

(i) in whole or in part directly or indirectly represents any proceeds arising from an offence endangering national security;

(ii) is intended to be used to finance or otherwise assist the commission of an offence endangering national security; or

(iii) was used to finance or otherwise assist the commission of an offence endangering national security; or

(b) mentioned in paragraph (b) of the definition of ***offence related property*** in section 1(1) of this Schedule,

order, subject to subsection (2), the forfeiture of the property.

(2) Where the Court of First Instance makes an order under subsection (1) in respect of any property, the Court of First Instance must specify in the order so much, if any, of the property in respect of which the Court of First Instance is not satisfied as mentioned in that subsection.

(3) An order may be made under this section whether or not proceedings are instituted against any person for an offence with which the property concerned is connected.

(4) The standard of proof on an application under this section is the standard of proof applicable to civil proceedings in a court of law.

14. Compensation

(1) If an investigation is begun against a person for an offence endangering national security and any of the following circumstances occurs, namely—

(a) no proceedings are instituted against that person;

(b) proceedings are instituted against that person but do not result in that person's conviction for any offence endangering national security;

(c) that person absconds after proceedings are instituted against that person and subsequently—

(i) ceases to be an absconder; and

(ii) either—

(A) those proceedings are continued or reinstituted but do not result in that person's conviction for any offence endangering national security; or

(B) those proceedings are not continued or reinstituted within a reasonable period after it is known to the Secretary for Justice that that person has ceased to be an absconder;

(d) proceedings are instituted against that person and that person is convicted of an offence endangering national security, but—

(i) the conviction concerned is quashed; or

(ii) that person is granted a pardon in respect of the conviction concerned,

the Court of First Instance may, on application by a person who held property which was realisable property (or, in the case of such a person who has died, the personal representative of such a person), order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court of First Instance must not order compensation to be paid under subsection (1) unless it is satisfied—

(a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence concerned; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court of First Instance under this Schedule.

(3) The Court of First Instance must not order compensation to be paid under subsection (1) in any case where it appears to the Court of First Instance that the investigation would have been continued, or the proceedings would have been instituted or continued if the serious default had not occurred.

(4) Without prejudice to subsection (1), where—

(a) a disclosure is made by any person in accordance with section 5(2) of this Schedule in relation to any property;

(b) in consequence of the disclosure and for the purposes of an investigation or prosecution in respect of an offence endangering national security any act is done or omitted to be done in relation to that property; and

(c) no proceedings are instituted against any person in respect of that offence or no restraint order or charging order is made by the Court of First Instance in relation to that property,

the Court of First Instance may, on application by a person who held the property, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(5) The Court of First Instance must not order compensation to be paid under subsection (4) unless it is satisfied—

(a) that there has been some serious default on the part of any person concerned in the investigation or prosecution of the offence concerned and that, but for that default, the act or omission referred to in subsection (4)(b) would not have occurred; and

(b) that the applicant has, in consequence of the act or omission referred to in subsection (4)(b), suffered loss in relation to the property.

(6) Subject to subsection (7), where property has ceased to be specified in a notice under section 3(1) of this Schedule, then the Court of First Instance may, on application by any person by, for or on behalf of whom the property that was so specified is held, order compensation to be paid by the Government to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(7) The Court of First Instance must not order compensation to be paid under subsection (6) unless it is satisfied—

(a) that at no time when the property was specified in a notice under section 3(1) of this Schedule was the offence related property;

(b) that there has been some default on the part of any person concerned in obtaining the relevant specification under section 3(1) of this Schedule; and

(c) that the applicant has, in consequence of the relevant specification and the default mentioned in paragraph (b), suffered loss.

(8) The amount of compensation to be paid under this section is an amount that the Court of First Instance thinks just in all the circumstances of the case.

15. Rules of court

For the rules of court applicable to any application made under this Schedule, reference may be made to the rules of court applicable to similar applications under the laws of Hong Kong (in particular, the Rules of the High Court made under section 30 of the Organized and Serious Crimes Ordinance (Cap. 455) and section 20 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) with the necessary modifications.

Schedule 4

[r. 2]

Rules on Removing Messages Endangering National Security and on Requiring Assistance

Part 1

Preliminary

1. Interpretation

(1) In this Schedule—

access (接達) includes—

(a) access that is subject to a pre-condition (including the use of a password);

(b) access by way of push technology; and

(c) access by way of a standing request;

carriage service (傳輸服務) means a service for carrying communications by means of guided or unguided electromagnetic energy or both;

designated officer (指定人員) means an officer appointed under section 13 of this Schedule;

disabling action (禁制行動)—see section 5 of this Schedule;

electronic message (電子訊息) includes—

(a) a text, voice, sound, image or video message; and

(b) a message combining text, voice, sound, images or video;

electronic platform (電子平台)—see section 2 of this Schedule;

hosting service (主機服務)—see section 3 of this Schedule;

hosting service provider (主機服務商)—see section 3 of this Schedule;

intermediary service (中介服務)—see section 2 of this Schedule;

network service provider (網絡服務商)—see section 4 of this Schedule;

platform service provider (平台服務商)—see section 2 of this Schedule;

service provider (服務商) means—

(a) a platform service provider;

(b) a hosting service provider; or

(c) a network service provider;

specified police officer (指明警務人員) means a police officer at or above the rank of Assistant Commissioner of Police.

(2) For the purposes of this Schedule, an electronic message is published regardless of whether or not the message is published to the public or a section of the public.

(3) In this Schedule, a reference to the public or a section of the public is a reference to the public or a section of the public in Hong Kong.

2. Meaning of *electronic platform*, *intermediary service* and *platform service provider*

In this Schedule—

electronic platform (電子平台) means a platform for intermediary service that is provided in an electronic system;

Example—

(a) a website; and

(b) an online application.

intermediary service (中介服務) means—

(a) a service that allows end-users to access materials originating from third parties through a carriage service;

(b) a service of transmitting such materials to end-users through a carriage service; or

(c) a service of displaying, to an end-user who uses the service to make a search through a carriage service, an index of search results, each of which links that end-user to content hosted or stored at a location that is separate from the location of the index of search results;

platform service provider (平台服務商), in relation to an electronic platform, means a person that supplies an intermediary service for the platform.

3. Meaning of *hosting service* and *hosting service provider*

(1) For the purposes of this Schedule, if—

(a) a person (***first person***) hosts stored material that has been posted on an electronic platform; and

(b) the first person or another person provides an intermediary service for the platform,

the hosting of the stored material by the first person is taken to be the provision by the first person of a hosting service for the platform.

(2) In this Schedule—

hosting service provider (主機服務商), in relation to an electronic platform, means a person that supplies a hosting service for the platform.

4. Meaning of *network service provider*

(1) In this Schedule—

network service provider (網絡服務商) means a person that supplies an internet service, or a specified network service, to the public or a section of the public.

(2) In this section—

internet service (互聯網服務) means a carriage service that enables end-users to access the Internet;

specified network service (指明網絡服務) means a carriage service that enables end-users to access an electronic platform via a connection tunnelled through one or more electronic communication networks.

5. Meaning of *disabling action*

(1) For the purposes of this Schedule, a platform service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—

(a) removes the message from the platform; or

(b) restricts or ceases access by any person, via the platform, to the message.

(2) For the purposes of this Schedule, a hosting service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—

(a) removes the message from the platform;

(b) restricts or ceases access by any person, via the platform, to the message;

(c) discontinues the hosting service for—

(i) the part of the platform on which the message is published; or

(ii) the whole of the platform; or

(d) restricts or ceases access by any person to—

(i) the part of the platform on which the message is published; or

(ii) the whole of the platform.

(3) For the purposes of this Schedule, a network service provider takes a disabling action on an electronic message published on an electronic platform if the service provider—

(a) restricts or ceases access by any person, via the platform, to the message; or

(b) restricts or ceases access by any person to—

(i) the part of the platform on which the message is published; or

(ii) the whole of the platform.

Part 2

Requirements to Take Disabling Action on Electronic Message

6. Commissioner of Police may authorize designated officer to exercise powers

The Commissioner of Police may, with the approval of the Secretary for Security, authorize a designated officer to exercise one or more of the powers specified in section 7 of this Schedule if the Commissioner has reasonable ground for suspecting that—

(a) a person has published an electronic message on an electronic platform; and

(b) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security.

7. Power to make requirements

(1) The powers under subsections (2), (3), (4) and (5) are specified for the purposes of section 6 of this Schedule.

(2) The designated officer may require the person who has published the electronic message on the electronic platform to remove the message from the platform before the deadline specified by the officer.

(3) The designated officer may require the platform service provider for the electronic platform to take a disabling action on the electronic message before the deadline specified by the officer.

(4) The designated officer—

(a) may notify a hosting service provider for the electronic platform of any requirement issued under subsection (3) to the platform service provider; and

(b) if it is not reasonably practicable to issue a requirement to the platform service provider under subsection (3), or the platform service provider fails to comply with a requirement issued under that subsection—may require the hosting service provider to take a disabling action on the electronic message before the deadline specified by the officer.

(5) The designated officer—

(a) may notify a network service provider of—

(i) a requirement issued under subsection (3) to the platform service provider; and

(ii) a requirement issued under subsection (4) to a hosting service provider; and

(b) if—

(i) the platform service provider fails to comply with a requirement issued under subsection (3), and it is not reasonably practicable to issue a requirement to a hosting service provider under subsection (4);

(ii) a hosting service provider fails to comply with a requirement issued under subsection (4); or

(iii) it is not reasonably practicable to issue a requirement to the platform service provider under subsection (3) or to a hosting service provider under subsection (4),

may require the network service provider to take a disabling action on the electronic message before the deadline specified by the officer.

8. Requirement ceasing to have effect

A requirement issued by a designated officer to a person or service provider under section 7 of this Schedule ceases to have effect if the designated officer notifies the person or service provider that another person has removed the electronic message from the electronic platform, or has taken a disabling action on the message.

Part 3

Requirements to Provide Identification Record or Decryption Assistance for Electronic Message

9. Power to make requirements

(1) A magistrate may issue a warrant authorizing a police officer to exercise the power specified in subsection (3) if the magistrate is satisfied by information on oath that—

(a) there is reasonable ground for suspecting that—

(i) a person has published an electronic message on an electronic platform;

(ii) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security; and

(iii) a service provider has in its possession, custody or control an identification record for the message, or may provide decryption assistance in respect of the message; and

(b) it is necessary to obtain the record or assistance from the service provider for the investigation, containment or prevention of the offence.

(2) However, a specified police officer or a police officer authorized by the specified police officer may exercise the power specified in subsection (3) without warrant if the specified police officer is satisfied that—

(a) there is reasonable ground for suspecting that—

(i) a person has published an electronic message on an electronic platform;

(ii) the publication is likely to constitute an offence endangering national security or is likely to cause the occurrence of an offence endangering national security; and

(iii) a service provider has in its possession, custody or control an identification record for the message, or may provide decryption assistance in respect of the message;

(b) it is necessary to obtain the record or assistance from the service provider for the investigation, containment or prevention of the offence; and

(c) a delay caused by an application for a warrant under subsection (1) is likely to defeat the purpose of obtaining the record or assistance, or for any reason it is not reasonably practicable to make the application.

(3) For the purposes of subsection (1) or (2), the police officer may require the service provider to provide the identification record or decryption assistance (as the case requires).

(4) For the purposes of this section, an identification record for an electronic message published on an electronic platform is a record containing information about the identity of the person who has published the message on the platform.

Part 4

Non-compliance

10. Non-compliance of person publishing electronic message

(1) If a person fails to comply with a requirement issued under section 7(2) of this Schedule, the person commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 1 year.

(2) It is a defence for a person charged under subsection (1) to show that the person had a specified excuse for the failure to comply with the requirement.

(3) A defendant is to be taken to have shown that the defendant had a specified excuse for the failure if—

(a) sufficient evidence is adduced to raise an issue that the defendant had such an excuse; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

(4) For the purposes of this section, a person had a specified excuse for a failure to comply with a requirement if it was not reasonable to expect the person to comply with the requirement because the technology necessary to comply with the requirement was not reasonably available to the person.

11. Power to remove messages from platform

If a magistrate is satisfied by information on oath that—

(a) a person fails to comply with a requirement issued under section 7(2) of this Schedule to remove an electronic message from an electronic platform; and

(b) it is necessary to remove the message from the platform to safeguard national security,

the magistrate may issue a warrant authorizing a police officer to seize an electronic device of the person, and to take any reasonably necessary action on the device, for removing the message from the platform.

12. Non-compliance of service provider

(1) If a service provider fails to comply with a requirement issued under section 7 or 9(3) of this Schedule, the service provider commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 6 months.

(2) It is a defence for a service provider charged under subsection (1) for a failure to comply with a requirement issued under section 7 of this Schedule to show that the service provider had a specified excuse for the failure.

(3) A defendant is to be taken to have shown that the defendant had a specified excuse for the failure to comply with a requirement issued under section 7 of this Schedule if—

(a) sufficient evidence is adduced to raise an issue that the defendant had such an excuse; and

(b) the contrary is not proved by the prosecution beyond reasonable doubt.

(4) For the purposes of this section, a service provider had a specified excuse for a failure to comply with a requirement if it was not reasonable to expect the service provider to comply with the requirement because—

(a) the technology necessary for complying with the requirement was not reasonably available to the service provider; or

(b) there was a risk of incurring substantial loss to, or otherwise substantially prejudicing the right of, a third party.

Part 5

Miscellaneous

13. Designated officer

The Secretary for Security may appoint a public officer as a designated officer for the purposes of this Schedule.

14. Extra-territorial application

(1) A power is exercisable under section 7(2) of this Schedule regardless of whether or not the electronic message is posted within or outside Hong Kong on the electronic platform.

(2) A power is exercisable under section 7(3) of this Schedule regardless of whether or not the intermediary service is provided within or outside Hong Kong.

(3) A power is exercisable under section 7(4)(b) of this Schedule regardless of whether or not the hosting service is provided within or outside Hong Kong.

(4) A power is exercisable under section 7(5)(b) of this Schedule in relation to a network service provider of an internet service or specified network service (within the meaning of section 4) if the service is available to an end-user in Hong Kong, regardless of whether or not the service is provided within or outside Hong Kong.

(5) A power is exercisable under section 9(3) of this Schedule regardless of whether or not the identification record or decryption key is located within or outside Hong Kong.

15. Requirement etc. in writing

(1) A requirement or notification under this Schedule must be in writing.

(2) For the purposes of this Schedule, a requirement or notification is issued to a person if—

(a) it is sent to the person at an address (including an email address and fax number) provided by the person for receiving correspondences; or

(b) where no such address is provided by the person, it is sent by an electronic message to the person.

16. Immunity from civil liability

A service provider who complies with a requirement issued under section 7 of this Schedule does not incur any civil liability, whether arising in contract, tort, equity or otherwise, to any person by reason only of that compliance.

Schedule 5

[r. 2]

Rules on Requiring Foreign and Taiwan Political Organizations and Agents to Provide Information by Reason of Activities Concerning Hong Kong

1. Interpretation

In this Schedule—

foreign agent (外國代理人)—

(a) means a person who carries on activities in Hong Kong, and—

(i) is directly or indirectly directed, directly or indirectly supervised, directly or indirectly controlled, employed, subsidized or funded by a foreign government or foreign political organization, or accepts monetary or non-monetary rewards from a foreign government or foreign political organization; and

(ii) carries on all or part of the person's activities for the benefit of a foreign government or foreign political organization; but

(b) does not include a diplomatic agent, a consular officer, or an employee of a consular post, who is entitled to privileges and immunities in Hong Kong in accordance with the laws of Hong Kong, or any other person or body that is entitled to privileges and immunities in Hong Kong in accordance with the laws of Hong Kong;

foreign political organization (外國政治性組織)—

(a) means—

(i) a political party outside the territory of the People's Republic of China;

(ii) any other organization outside the territory of the People's Republic of China that pursues political ends; but

(b) does not include a political organization that does not carry on activities (including activities carried on through another person) in Hong Kong;

Taiwan agent (台灣代理人) means a person who carries on activities in Hong Kong, and—

(a) is directly or indirectly directed, directly or indirectly supervised, directly or indirectly controlled, employed, subsidized or funded by a Taiwan authority or Taiwan political organization, or accepts monetary or non-monetary rewards from a Taiwan authority or Taiwan political organization; and

(b) carries on all or part of the person's activities for the benefit of a Taiwan authority or Taiwan political organization;

Taiwan authority (台灣當局) means the administrative authority or related organization of Taiwan;

Taiwan political organization (台灣政治性組織)—

(a) means—

(i) a political party in Taiwan;

(ii) any other organization in Taiwan that pursues political ends; but

(b) does not include a political organization that does not carry on activities (including activities carried on through another person) in Hong Kong.

2. Regulation of foreign or Taiwan political organizations

(1) If the Commissioner of Police reasonably believes that it is necessary to issue the requirement for the prevention and investigation of an offence endangering national security, the Commissioner may from time to time, with the approval of the Secretary for Security, by written notice served on a foreign political organization or Taiwan political organization, require the organization to provide the Commissioner with the following information within the specified period in the specified way—

(a) the personal particulars of the staff of the organization in Hong Kong, and of the members of the organization in Hong Kong (including name, age, type and number of identification document, occupation and residential address);

(b) the activities of the organization in Hong Kong;

(c) the assets, income, sources of income, and expenditure of the organization in Hong Kong.

(2) The obligations imposed on an organization by subsection (1) is binding on every office-bearer of the organization in Hong Kong, and on every person managing or assisting in the management of the organization in Hong Kong, if the office-bearer or person has been served with the notice under subsection (1).

(3) If an organization fails to comply with a notice served under subsection (1), every office-bearer and person who is mentioned in subsection (2) and who has been served with the notice commits an offence and is liable on

conviction on indictment to a fine of $100,000 and to imprisonment for 6 months unless the office-bearer or person establishes to the satisfaction of the court that the office-bearer or person has exercised due diligence and that the office-bearer or person has failed to comply with the notice for reasons beyond the office-bearer's or the person's controls.

(4) If any information provided to the Commissioner of Police in compliance with a notice served under subsection (1) is false, incorrect, or incomplete in a material particular, the person who has provided the information commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 2 years unless the person establishes to the satisfaction of the court that the person had good reason to believe that the information was true, correct and complete.

3. Regulation of foreign or Taiwan agents

(1) If the Commissioner of Police reasonably believes that it is necessary to issue the requirement for the prevention and investigation of an offence endangering national security, the Commissioner may from time to time, with the approval of the Secretary for Security, by written notice served on a foreign agent or Taiwan agent, require the agent to provide the Commissioner with the following information within the specified period in the specified way—

(a) if the agent is an individual—

(i) the activities of the agent in Hong Kong, and the personal particulars of the agent (including the activities participated by the agent in any local organization, the agent's post, business, occupation and address);

(ii) the assets, income, sources of income, and expenditure of the agent in Hong Kong; or

(b) if the agent is an organization—

(i) the personal particulars of the staff of the organization in Hong Kong, and of the members of the organization in Hong Kong (including name, age, type and number of identification document, occupation and residential address);

(ii) the activities of the organization in Hong Kong;

(iii) the assets, income, sources of income, and expenditure of the organization in Hong Kong.

(2) If an agent fails to comply with a notice served under subsection (1)(a), the agent commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 6 months unless the agent establishes to the satisfaction of the court that the agent has exercised due diligence and has failed to comply with the notice for reasons beyond the agent's controls.

(3) If a foreign agent or Taiwan agent is an organization—

(a) the obligations imposed on the agent by subsection (1)(b) is binding on every office-bearer in Hong Kong, and on every person managing or assisting in the management of the organization in Hong Kong, if the office-bearer or person has been served with the notice under subsection (1); and

(b) if the agent fails to comply with a notice served under subsection (1)(b), every office-bearer and person who is mentioned in paragraph (a) and who has been served with the notice commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 6 months unless

the office-bearer or person establishes to the satisfaction of the court that the office-bearer or person has exercised due diligence and that the office-bearer or person has failed to comply with the notice for reasons beyond the office-bearer's or person's controls.

(4) If any information provided to the Commissioner of Police in compliance with a notice served under subsection (1) is false, incorrect, or incomplete in a material particular, the person who has provided the information commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 2 years unless the person establishes to the satisfaction of the court that the person had good reason to believe that the information was true, correct and complete.

4. Service of written notices

A notice that may be served on an organization or person under section 2 or 3 of this Schedule is, in the absence of evidence to the contrary, deemed to be so served if—

(a) for an individual, the notice is—

(i) delivered to the individual;

(ii) left at the individual's last known address for service in Hong Kong, or at the individual's last known place of residence or business in Hong Kong;

(iii) sent by post to the individual at the individual's last known address for service in Hong Kong, or at the individual's last known postal address in Hong Kong; or

(iv) sent by electronic mail transmission, fax transmission or other similar method to the individual at the individual's last known address for service in Hong Kong, or at the individual's last known postal address in Hong Kong, or at the individual's last known place of residence or business in Hong Kong;

(b) for an organization, the notice is—

(i) given to or served on an office-bearer of the organization in Hong Kong, or a person managing or assisting in the management of the organization in Hong Kong;

(ii) left at the organization's last known address for service in Hong Kong, or at its last known address in Hong Kong;

(iii) sent by post to the organization at its last known address for service in Hong Kong, or at its last known postal address in Hong Kong; or

(iv) sent by electronic mail transmission, fax transmission or other similar method to the organization at its last known address for service in Hong Kong, or at its last known postal address in Hong Kong, or at its last known address in Hong Kong.

Schedule 6

[r. 2]

Rules on Application for Authorization to Conduct Interception and Covert Surveillance

Part 1

Basic Principles

1. Interpretation

Part 6 of this Schedule contains interpretation provisions of this Schedule.

2. Conditions

(1) The conditions for the issue, confirmation or renewal of a prescribed authorization, or the continuance of a prescribed authorization or a part of a prescribed authorization, to conduct interception or covert surveillance are that in the relevant case—

(a) the purpose sought to be furthered by conducting the interception or covert surveillance (***purpose sought***) is that of—

(i) preventing or detecting offences endangering national security; or

(ii) protecting national security;

(b) there is reasonable suspicion that any person has been, is, or is likely to be, involved in—

(i) (in the case of paragraph (a)(i)) the relevant offences endangering national security to be prevented or detected; or

(ii) (in the case of paragraph (a)(ii)) any activity which constitutes or would constitute the relevant threat to national security; and

(c) the interception or covert surveillance is necessary for, and proportionate to, the purpose sought, on considering—

(i) the balance between the relevant factors and the intrusiveness of the interception or covert surveillance on any person who is to be the subject of or may be affected by the interception or covert surveillance;

(ii) whether the purpose sought can reasonably be furthered by other less intrusive means; and

(iii) such other matters that are relevant in the circumstances.

(2) In this section—

relevant factors (有關因素) means—

(a) the following factors—

(i) in the case of subsection (1)(a)(i)—the immediacy and gravity of the relevant offences endangering national security to be prevented or detected; or

(ii) in the case of subsection (1)(a)(ii)—the immediacy and gravity of the relevant threat to national security; and

(b) the likely value and relevance, in relation to the purpose sought, of the information likely to be obtained by conducting the interception or covert surveillance.

3. Who can apply for prescribed authorizations

A person who applies for a prescribed authorization under this Schedule must be an officer of the Police Force who is responsible for the enforcement of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

Part 2

Prescribed Authorizations and Safeguards

Division 1—Chief Executive's Authorization

4. Authorization for interception or covert surveillance

(1) An officer of the Police Force may, with the approval of a directorate officer, make an application to the Chief Executive in writing, supported by a written statement by the applicant (which is to comply with the requirements specified in Division 1 or 2 of Part 4 of this Schedule as may be applicable), for an authorization for interception, Type 1 surveillance or Type 2 surveillance to be conducted.

(2) The Chief Executive may, on considering whether the application has met the conditions under section 2 of this Schedule—

(a) (if satisfied that the conditions have been met) issue in writing the authorization sought under the application, with or without variations; or

(b) refuse to issue the authorization, giving the reason for the refusal in writing.

(3) When issuing the authorization, the Chief Executive must specify the duration (which in any case is not to begin at a time earlier than the time when the authorization is issued). Subject to any renewal under section 6 of this Schedule, the authorization ceases to have effect on the expiry of the duration (which is not to be longer than the period of 6 months beginning with the time when the authorization takes effect).

5. Authorization for Type 2 surveillance

(1) The Chief Executive may designate a directorate officer to be an authorizing officer for Type 2 surveillance.

(2) An officer of the Police Force may make an application to an authorizing officer in writing, supported by a written statement by the applicant (which is to comply with the requirements specified in Division 2 of Part 4 of this Schedule), for an authorization for Type 2 surveillance to be conducted.

(3) The authorizing officer may, on considering whether the application has met the conditions under section 2 of this Schedule—

(a) (if satisfied that the conditions have been met) issue in writing the authorization sought under the application, with or without variations; or

(b) refuse to issue the authorization, giving the reason for the refusal in writing.

(4) When issuing the authorization, the authorizing officer must specify the duration (which in any case is not to begin at a time earlier than the time when the authorization is issued). Subject to any renewal under section 7 of this Schedule, the authorization ceases to have effect on the expiry of the duration (which is not to be longer than the period of 6 months beginning with the time when the authorization takes effect).

6. Renewal of authorization for interception or covert surveillance

(1) At any time before an authorization for interception, Type 1 surveillance or Type 2 surveillance ceases to have effect, an officer of the Police Force may, with the approval of a directorate officer, make an application to the Chief Executive in writing, supported by a written statement by the applicant (which is to comply with the requirements specified in Division 3 of Part 4 of this Schedule), for a renewal of the authorization.

(2) The Chief Executive may, on considering whether the application has met the conditions under section 2 of this Schedule, and without limiting the foregoing, taking into consideration the duration for which the authorization has had effect since its first issue—

(a) (if satisfied that the conditions have been met) grant in writing the renewal sought under the application, with or without variations; or

(b) refuse to grant the renewal, giving the reason for the refusal in writing.

(3) An authorization for interception, Type 1 surveillance or Type 2 surveillance may be renewed more than once under this Schedule.

(4) A renewal of an authorization for interception, Type 1 surveillance or Type 2 surveillance, subject to any further renewal under this section, ceases to have effect on the expiry of the duration specified by the Chief Executive when granting the renewal, which duration is not to be longer than the period of 6 months beginning with the time when the renewal takes effect.

7. Renewal of authorization for Type 2 surveillance

(1) At any time before an authorization for Type 2 surveillance ceases to have effect, an officer of the Police Force may make an application to an authorizing officer in writing, supported by a written statement by the applicant (which is to comply with the requirements specified in Division 3 of Part 4 of this Schedule), for a renewal of the authorization.

(2) The authorizing officer may, on considering whether the application has met the conditions under section 2 of this Schedule, and without limiting the foregoing, taking into consideration the duration for which the authorization has had effect since its first issue—

(a) (if satisfied that the conditions have been met) grant in writing the renewal sought under the application, with or without variations; or

(b) refuse to grant the renewal, giving the reason for the refusal in writing.

(3) An authorization for Type 2 surveillance may be renewed more than once under this Schedule.

(4) A renewal of an authorization for Type 2 surveillance, subject to any further renewal under this section, ceases to have effect on the expiry of the duration specified by the authorizing officer when granting the renewal, which

duration is not to be longer than the period of 6 months beginning with the time when the renewal takes effect.

8. Matters authorized or required by Chief Executive's authorizations

(1) A Chief Executive's authorization for interception may—

(a) in the case of a postal interception, contain terms that authorize one or both of the following—

(i) the interception of communications made to or from any premises or address specified in the authorization;

(ii) the interception of communications made to or by any person specified in the authorization (whether by name or by description); or

(b) in the case of a telecommunications interception, contain terms that authorize one or both of the following—

(i) the interception of communications made to or from telecommunications service specified in the authorization;

(ii) the interception of communications made to or from telecommunications service that any person specified in the authorization (whether by name or by description) is using, or is reasonably expected to use.

(2) A Chief Executive's authorization for covert surveillance may contain terms that authorize one or more of the following—

(a) the use of surveillance devices in or on the premises specified in the authorization;

(b) the use of surveillance devices in or on objects, or classes of objects, specified in the authorization;

(c) the use of surveillance devices in respect of the conversations, activities or location of any person specified in the authorization (whether by name or by description).

(3) A Chief Executive's authorization (except for an authorization for Type 2 surveillance) may contain terms that—

(a) authorize the doing of anything reasonably necessary to conceal a conduct authorized or required to be carried out under the authorization;

(b) if it is reasonably necessary for the execution of the authorization, authorize the interference with properties (whether or not of any person who is the subject of the interception or covert surveillance concerned); and

(c) require a person specified in the authorization (whether by name or by description), on being shown a copy of the authorization, to provide to officers of the Police Force such reasonable assistance for the execution of the authorization.

(4) A Chief Executive's authorization for interception also authorizes—

(a) the installation, use and maintenance of devices required to be used in order to intercept any of the communications authorized to be intercepted under the authorization;

(b) the entry, by the use of reasonable force if necessary, into or onto any premises in order to carry out a conduct authorized or required to be carried out under the authorization;

(c) the incidental interception of communication which necessarily arises from the interception of communications authorized to be conducted under the authorization; and

(d) where subsection (1)(a)(ii) or (b)(ii) is applicable, the provision to any person, for the execution of the authorization, of particulars of the addresses, numbers, apparatus or other factors, or combination of factors, that are to be used for identifying—

(i) in the case of subsection (1)(a)(ii), the communications made to or by the person specified in the authorization; or

(ii) in the case of subsection (1)(b)(ii), the communications made to or from telecommunications service that the person specified in the authorization is using, or is reasonably expected to use.

(5) A Chief Executive's authorization for covert surveillance also authorizes—

(a) where subsection (2)(a) is applicable—

(i) the installation, use and maintenance of the surveillance devices authorized to be used under the authorization in or on the premises specified in the authorization; and

(ii) in the case of Type 1 surveillance, the entry, by the use of reasonable force if necessary, into or onto the premises, and other premises adjoining or providing access to the premises, in order to carry out a conduct authorized or required to be carried out under the authorization;

(b) where subsection (2)(b) is applicable—

(i) the installation, use and maintenance of the surveillance devices authorized to be used under the authorization in or on the object, or an object of the class, specified in the authorization; and

(ii) in the case of Type 1 surveillance, the entry, by the use of reasonable force if necessary, into or onto any premises where the object, or an object of the class, is reasonably believed to be or likely to be, and other premises adjoining or providing access to the premises, in order to carry out a conduct authorized or required to be carried out under the authorization; and

(c) where subsection (2)(c) is applicable—

(i) the installation, use and maintenance of the surveillance devices authorized to be used under the authorization in or on the premises where the person specified in the authorization is reasonably believed to be or likely to be; and

(ii) in the case of Type 1 surveillance, the entry, by the use of reasonable force if necessary, into or onto the premises, and other premises adjoining or providing access to the premises, in order to carry out a conduct authorized or required to be carried out under the authorization.

Division 2—Emergency Authorization

9. Emergency authorization for interception or Type 1 surveillance in case of emergency

(1) An officer of the Police Force may apply to the Commissioner of Police for the issue of an emergency authorization for interception or Type 1 surveillance to be conducted, if the officer considers that—

(a) there is immediate need for the interception or Type 1 surveillance to be conducted by reason of an imminent risk of—

(i) death or serious bodily harm of any person;

(ii) substantial damage to property;

(iii) serious threat to national security; or

(iv) loss of vital evidence; and

(b) having regard to all the circumstances of the case, it is not reasonably practicable to apply in writing for the issue of a Chief Executive's authorization under section 4 of this Schedule.

(2) The Commissioner of Police may, on considering whether subsection (1)(a) and (b) applies, and whether the application has met the conditions under section 2 of this Schedule—

(a) (if satisfied that the subsection is applicable and the conditions have been met) issue the emergency authorization sought under the application, with or without variations; or

(b) refuse to issue the emergency authorization.

(3) When issuing the emergency authorization, the Commissioner of Police must specify the duration (which in any case is not to begin at a time earlier than the time

when the authorization is issued). The authorization ceases to have effect on the expiry of the duration (which is not to be longer than the period of 48 hours beginning with the time when the authorization is issued).

(4) An emergency authorization may not be renewed under this Schedule.

10. Confirmation of emergency authorization

(1) Where an interception or Type 1 surveillance is conducted pursuant to an emergency authorization, the Commissioner of Police must cause an officer of the Police Force to make an application to the Chief Executive in writing, supported by a written statement by the applicant, for confirmation of the authorization, as soon as reasonably practicable after, and in any event within the period of 48 hours beginning with, the time when the authorization is issued.

(2) In default of any application being made for confirmation of the emergency authorization within the period of 48 hours referred to in subsection (1), the Commissioner of Police must cause the immediate destruction of any information obtained by conducting the interception or Type 1 surveillance concerned.

(3) If there is an application under subsection (1), the Chief Executive may, on considering whether the application has met the conditions under section 2 of this Schedule—

(a) (if satisfied that the conditions have been met) confirm the emergency authorization in writing, with or without variations or new conditions; or

(b) refuse to confirm the emergency authorization, giving the reason for the refusal in writing.

(4) Where the Chief Executive specifies variations or new conditions under subsection (3)(a), the emergency authorization is only to have effect subject to the variations, and any new conditions, specified by the Chief Executive, from the time of the determination.

(5) Where the Chief Executive refuses to confirm the emergency authorization under subsection (3)(b), the emergency authorization is, despite any other provision of this Schedule, to be revoked on the making of the determination. The Chief Executive may order the Commissioner of Police to cause the immediate destruction of any information obtained by conducting the interception or Type 1 surveillance concerned.

11. Matters authorized or required by emergency authorizations

Section 8 of this Schedule applies to an emergency authorization, as if references to a Chief Executive's authorization for interception or Type 1 surveillance in that section were references to an emergency authorization.

Division 3—Other Provisions Related to Prescribed Authorizations

12. What prescribed authorization also authorizes

A prescribed authorization also authorizes the undertaking of a conduct, including the following conduct, that is necessary for and incidental to the carrying out of what is authorized or required to be carried out under the authorization—

(a) the retrieval of devices authorized to be used under the authorization;

(b) the installation, use, maintenance and retrieval of an enhancement equipment for the devices;

(c) the temporary removal of any conveyance or object from any premises for the installation, maintenance or retrieval of the devices or enhancement equipment and the return of the conveyance or object to the premises;

(d) the breaking open of anything for the installation, maintenance or retrieval of the devices or enhancement equipment;

(e) the connection of the devices or enhancement equipment to a source of electricity and the use of electricity from that source to operate the devices or enhancement equipment;

(f) the connection of the devices or enhancement equipment to an object or system that may be used to transmit information in any form and the use of that object or system in connection with the operation of the devices or enhancement equipment; and

(g) the provision of assistance for the execution of the authorization.

13. What prescribed authorization may not authorize other than in exceptional circumstances

(1) Unless exceptional circumstances exist—

(a) no prescribed authorization may authorize the interception of communications in a situation that involves—

(i) (in the case of a postal interception) an office or other relevant premises, or a residence, of a lawyer; or

(ii) (in the case of a telecommunications interception) a telecommunications service used at an office or other relevant premises, or a residence, of a lawyer, or a telecommunications service known or reasonably expected to be known by the applicant for the prescribed authorization to be ordinarily used by a lawyer for the purpose of providing legal advice to clients; and

(b) no prescribed authorization may authorize covert surveillance to be conducted in respect of oral or written communications taking place at an office or other relevant premises, or a residence, of a lawyer.

(2) For the purposes of subsection (1), exceptional circumstances exist if the relevant authority is satisfied that there are reasonable grounds to believe—

(a) that—

(i) the lawyer concerned;

(ii) other lawyers practising with the lawyer concerned or other persons working in the office of the lawyer concerned; or

(iii) in the case of a residence of the lawyer, other persons residing in the residence,

are parties to any activity which constitutes or would constitute an offence endangering national security or a threat to national security; or

(b) that any of the communications concerned is for the furtherance of a criminal purpose.

(3) To avoid doubt, information that is subject to legal professional privilege is to remain privileged despite that it has been obtained pursuant to a prescribed authorization.

(4) In this section—

lawyer (律師) means a barrister, solicitor or foreign lawyer as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159) who practises as such, or any person holding an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91);

other relevant premises (其他有關處所), in relation to a lawyer, means any premises, other than an office of the lawyer, that are known or reasonably expected to be known by the applicant for the prescribed authorization to be ordinarily used by the lawyer and by other lawyers for the purpose of providing legal advice to clients (including any premises ordinarily used by lawyers for the purpose of providing legal advice to clients when in court or visiting a prison, police station or other place where any person is detained).

14. Issue of device retrieval warrants after prescribed authorizations having ceased to have effect

(1) Where a prescribed authorization has in any way ceased to have effect under this Schedule, an officer of the Police Force may make an application to the Chief Executive in writing, supported by a written statement by the applicant (which is to comply with the requirements specified in Part 5 of this Schedule), for the issue of a device retrieval warrant authorizing the retrieval of the devices authorized to be used under the authorization if such devices—

(a) have been installed in or on any premises or object, pursuant to the authorization; and

(b) are still in or on such premises or object, or are in or on any other premises or object.

(2) The Chief Executive may—

(a) issue in writing the device retrieval warrant sought under the application, with or without variations; or

(b) refuse to issue the device retrieval warrant, giving the reason for the refusal in writing.

(3) When issuing the device retrieval warrant, the Chief Executive must specify the duration (which in any case is not to begin at a time earlier than the time when the warrant is issued). The warrant ceases to have effect on the expiry of the duration (which is not to be longer than the period of 3 months beginning with the time when the warrant takes effect).

(4) A device retrieval warrant may authorize the retrieval of a device specified in the warrant, and may contain terms that authorize the carrying out of one or both of the following—

(a) the doing of anything reasonably necessary to conceal a conduct authorized to be carried out under the warrant;

(b) if it is reasonably necessary for the execution of the warrant, the interference with properties (whether or not of any person who is the subject of the interception or covert surveillance concerned).

(5) A device retrieval warrant also authorizes the undertaking of a conduct, including the following conduct, that is necessary for and incidental to the carrying out of what is authorized to be carried out under the warrant—

(a) the retrieval of an enhancement equipment for the devices authorized to be retrieved under the warrant;

(b) the entry, by the use of reasonable force if necessary, into or onto the premises where the devices or enhancement equipment is reasonably believed to be or likely to be, and other premises adjoining or providing access to the premises, in order to retrieve the devices or enhancement equipment;

(c) the temporary removal of any conveyance or object from any premises for the retrieval of the devices or enhancement equipment and the return of the conveyance or object to the premises;

(d) the breaking open of anything for the retrieval of the devices or enhancement equipment; and

(e) the provision of assistance for the execution of the warrant.

(6) A device retrieval warrant which authorizes the retrieval of tracking devices also authorizes the use of the devices and enhancement equipment for the devices solely for the purposes of the location and retrieval of the devices or enhancement equipment.

(7) If, while a device retrieval warrant is in force but not yet completely executed, an officer of the Police Force who is for the time being in charge of the execution of the warrant—

(a) becomes aware that subsection (1)(a) or (b) does not apply to the devices or any of the devices specified in the warrant; or

(b) is of the opinion that the warrant or a part of the warrant cannot for whatever reason be executed,

the officer must, as soon as reasonably practicable after becoming aware of the matter or forming the opinion, cause a report on the matter or opinion to be provided to the Chief Executive.

15. Prescribed authorizations and device retrieval warrants not affected by minor defects

(1) A prescribed authorization or device retrieval warrant is not affected by any minor defect relating to it.

(2) Information (including any protected product) obtained pursuant to a prescribed authorization is not by reason only of minor defect relating to the prescribed authorization to be rendered inadmissible in evidence in any proceedings before a court.

Division 4—Further Safeguards

16. Safeguards for protected products

(1) Where any protected product has been obtained pursuant to a prescribed authorization, the Commissioner of Police must make arrangements to ensure—

(a) that the following are limited to the minimum that is necessary for the relevant purpose of the authorization—

(i) the extent to which the protected product is disclosed;

(ii) the number of persons to whom any of the protected product is disclosed;

(iii) the extent to which the protected product is copied; and

(iv) the number of copies made of the protected product;

(b) that all practicable steps are taken to ensure that the protected product is protected against unauthorized or accidental access, processing, erasure or other use; and

(c) that the protected product is destroyed as soon as its retention is not necessary for the relevant purpose of the authorization.

(2) Despite any other provision of this Schedule or other laws, if the Chief Executive believes that the provision or disclosure by a person to another person of information, document or other matter concerning the assistance provided by that person for the execution of a prescribed authorization or a device retrieval warrant would be prejudicial to the prevention or detection of offences endangering national security or protection of national security, the Chief Executive may by writing order that person not to provide or disclose such information, document or other matter.

(3) In this section—

device retrieval warrant (器材取出手令) means a device retrieval warrant as defined by section 27(1) of this Schedule or by section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap. 589);

prescribed authorization (訂明授權) means a prescribed authorization as defined by section 27(1) of this Schedule or by section 2(1) of the Interception of Communications and Surveillance Ordinance (Cap. 589);

relevant purpose (有關目的), in respect of a prescribed authorization, means the purpose that is a condition for issuing, confirming or renewing that authorization, or continuing that authorization or a part of that authorization, and that is described in section 2(1)(a) of this Schedule.

17. Non-admissibility of telecommunications interception product

(1) A telecommunications interception product is not admissible in evidence in any proceedings before a court other than to prove that a relevant offence has been committed.

(2) Based on public interest considerations, a telecommunications interception product, and particulars as to a telecommunications interception conducted pursuant to a relevant prescribed authorization, must not be made available to any party to proceedings before a court, including the prosecution (other than any such proceedings instituted for a relevant offence).

(3) In any proceedings before a court (other than such proceedings instituted for a relevant offence), evidence or question which tends to suggest the following matters may not be adduced or asked—

(a) that an application has been made for the issue or renewal of a relevant prescribed authorization, or the issue of a relevant device retrieval warrant, under this Schedule;

(b) that a relevant prescribed authorization has been issued or renewed, or a relevant device retrieval warrant has been issued, under this Schedule;

(c) that a requirement has been imposed on any person to provide assistance for the execution of a relevant prescribed authorization or a relevant device retrieval warrant; or

(d) that information has been obtained pursuant to a relevant prescribed authorization.

(4) In this section—

relevant device retrieval warrant (有關器材取出手令) means a device retrieval warrant which authorizes the retrieval of any device authorized to be used under a relevant prescribed authorization;

relevant offence (有關罪行) means an offence constituted by the disclosure of a telecommunications interception product or of information relating to the obtaining of a telecommunications interception product (whether or not there are other constituent elements of the offence);

relevant prescribed authorization (有關訂明授權) means a prescribed authorization in relation to a telecommunications interception;

telecommunications interception product (電訊截取成果), where the interception product is—

(a) any content of a communication obtained under a relevant prescribed authorization; or

(b) a copy of such content,

means such interception product.

18. Report to relevant authority: inaccurate information or change in circumstances

(1) This section applies if, while a prescribed authorization is in force, an officer of the Police Force who is for the time being in charge of the interception or covert surveillance concerned—

(a) becomes aware that there is a material inaccuracy in the information provided for the purposes of—

(i) the application for the issue of a Chief Executive's authorization or emergency authorization;

(ii) the application for the renewal of a Chief Executive's authorization; or

(iii) the application for the confirmation of an emergency authorization; or

(b) becomes aware that there has been a material change in the circumstances (including the arrest of the subject of the interception or covert surveillance) on the basis of which the authorization was issued or renewed, or the emergency authorization was confirmed.

(2) The officer must, as soon as reasonably practicable after becoming aware of the matter described in subsection (1)(a) or (b), cause a report on the matter to be provided to the relevant authority by whom the prescribed authorization has been issued or renewed, or the emergency authorization has been confirmed (as may be applicable).

(3) Where the relevant authority receives a report under subsection (2), if the relevant authority considers that the conditions for the continuance of the prescribed authorization concerned or a part of the prescribed authorization concerned under section 2 of this Schedule are not met, the relevant authority must revoke the authorization or that part of the authorization.

(4) If the prescribed authorization or a part of the prescribed authorization is revoked under subsection (3), the authorization or that part of the authorization, despite the relevant duration provision, ceases to have effect from the time of the revocation.

(5) If the prescribed authorization is not revoked or only part of the prescribed authorization is revoked, the relevant authority may do one or both of the following—

(a) vary any terms or conditions in the authorization;

(b) specify any new conditions in the authorization that apply to the authorization itself or to any further authorization or requirement under it (whether granted or imposed under its terms or any provision of this Schedule).

(6) If, at the time of the provision of a report to the relevant authority under subsection (2), the relevant authority is no longer holding his or her office or performing the relevant functions of that office, without affecting section 54 of the Interpretation and General Clauses Ordinance (Cap. 1), the reference to the relevant authority in that subsection includes the person for the time being lawfully performing the relevant functions of the office of that relevant authority.

(7) In this section—

relevant duration provision (有關時限條文) means section 4(3), 5(4), 6(4), 7(4) or 9(3) of this Schedule (as may be applicable).

Part 3

Other Relevant Arrangements

19. Supervising responsibility

The Chief Executive may appoint an independent person to assist the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region in fulfilling its supervising responsibility stipulated under Article 43 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

20. Operating Principles and Guidelines

(1) The Secretary for Security must issue Operating Principles and Guidelines for the purpose of providing operating principles and guidance to officers of the Police Force in respect of matters provided for in this Schedule, and may from time to time revise the whole or any part of the Operating Principles and Guidelines.

(2) Officers of the Police Force must, in performing any function under this Schedule or for the implementation of any provision of this Schedule, comply with the provisions of the Operating Principles and Guidelines.

(3) A failure on the part of any person to comply with any provision of the Operating Principles and Guidelines—

(a) is for all purposes not of itself to be regarded as a failure to comply with any provision of this Schedule; and

(b) without prejudice to paragraph (a), does not affect the validity of any prescribed authorization or device retrieval warrant.

21. Immunity

(1) Subject to subsection (2), a person does not incur civil or criminal liability by reason only of—

(a) a conduct carried out pursuant to a prescribed authorization or device retrieval warrant, or an incidental conduct;

(b) the person's performance or purported performance in good faith of any function under this Schedule; or

(c) the person's compliance with a requirement made or purportedly made under this Schedule.

(2) Nothing in subsection (1) affects liability that is or may be incurred by any person by reason only of—

(a) entry into or onto any premises without permission; or

(b) interference with any property without permission.

22. Protected products obtained after revocation of prescribed authorization

(1) If a prescribed authorization or a part of a prescribed authorization is revoked under section 18(3) of this Schedule, the Commissioner of Police must make arrangements to ensure that the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued as soon as reasonably practicable.

(2) Any protected product that is obtained after the prescribed authorization concerned or the relevant part of the prescribed authorization concerned is revoked and before the interception or covert surveillance concerned or the relevant part of the interception or covert surveillance concerned is discontinued in accordance with the arrangements made by the Commissioner of Police under subsection (1) is, for the purposes of this Schedule, to be regarded as having been obtained pursuant to a prescribed authorization.

Part 4

Requirements for Statement for Application for Issue or Renewal of Prescribed Authorization for Interception or Covert Surveillance

Division 1—Application for Issue of Chief Executive's Authorization for Interception

23. Contents of statement supporting application (interception)

A statement supporting an application for the issue of a Chief Executive's authorization for interception is to—

(a) state which of the purposes specified in section 2(1)(a)(i) and (ii) of this Schedule is sought to be furthered by conducting the interception;

(b) set out—

(i) the form of the interception and the information sought to be obtained by conducting the interception;

(ii) if known, the identity of any person who is to be the subject of the interception;

(iii) if known, particulars of the addresses, numbers, apparatus or other factors that are to be used for identifying any communication that is to be intercepted;

(iv) the proposed duration of the interception;

(v) the grounds for the reasonable suspicion specified in section 2(1)(b) of this Schedule;

(vi) the following information—

(A) for the purpose specified in section 2(1)(a)(i) of this Schedule, the relevant offences endangering national security to be prevented or detected and an assessment of their immediacy and gravity; or

(B) for the purpose specified in section 2(1)(a)(ii) of this Schedule, the relevant threat to national security and an assessment of its immediacy and gravity;

(vii) the benefits likely to be obtained by conducting the interception;

(viii) an assessment of the impact (if any) of the interception on any person other than the subject;

(ix) whether it is likely that any information which may be subject to legal professional privilege, or may be the contents of any journalistic material, will be obtained by conducting the interception;

(x) the reason why the purpose sought to be furthered by conducting the interception cannot reasonably be furthered by other less intrusive means; and

(xi) if known, whether, during the preceding 2 years, there has been any application for the issue or renewal of a prescribed authorization under this Schedule in respect of the subject mentioned in subparagraph (ii) or (if the particulars of any telecommunications service have been set out in the statement under subparagraph (iii)) the telecommunications service, and if so, particulars of such application; and

(c) identify by name, rank and post the applicant and the officer of the Police Force approving the making of the application.

Division 2—Application for Issue of Chief Executive's Authorization for Covert Surveillance

24. Contents of statement supporting application (Type 1 surveillance or Type 2 surveillance)

A statement supporting an application for the issue of a Chief Executive's authorization for Type 1 surveillance or Type 2 surveillance is to—

(a) state which of the purposes specified in section 2(1)(a)(i) and (ii) of this Schedule is sought to be furthered by conducting the surveillance;

(b) set out—

(i) the form of the surveillance (including the kind or kinds of any devices to be used) and the information sought to be obtained by conducting the surveillance;

(ii) if known, the identity of any person who is to be the subject of the surveillance;

(iii) the identity of any person, other than that referred to in subparagraph (ii), who may be affected by the surveillance or, if the identity of such person is not known, the description of any such person or class of such persons who may be affected by the surveillance;

(iv) if known, particulars of any premises or any object or class of objects in or on which the surveillance is to be conducted;

(v) the proposed duration of the surveillance;

(vi) the grounds for the reasonable suspicion specified in section 2(1)(b) of this Schedule;

(vii) the following information—

(A) for the purpose specified in section 2(1)(a)(i) of this Schedule, the relevant offences endangering national security to be prevented or detected and an assessment of their immediacy and gravity; or

(B) for the purpose specified in section 2(1)(a)(ii) of this Schedule, the relevant threat to national security and an assessment of its immediacy and gravity;

(viii) the benefits likely to be obtained by conducting the surveillance;

(ix) an assessment of the impact (if any) of the surveillance on any person other than the subject;

(x) whether it is likely that any information which may be subject to legal professional privilege, or may be the contents of any journalistic material, will be obtained by conducting the surveillance;

(xi) the reason why the purpose sought to be furthered by conducting the surveillance cannot reasonably be furthered by other less intrusive means; and

(xii) if known, whether, during the preceding 2 years, there has been any application for the issue or renewal of a prescribed authorization under this Schedule in respect of the subject mentioned in

subparagraph (ii), and if so, particulars of such application; and

(c) identify by name, rank and post the applicant and the officer of the Police Force approving the making of the application.

Division 3—Application for Renewal of Chief Executive's Authorization for Interception or Covert Surveillance

25. Contents of statement supporting application (renewal)

A statement supporting an application for the renewal of a Chief Executive's authorization is to—

(a) set out—

(i) whether the renewal sought is the first renewal and, if not, each occasion on which the Chief Executive's authorization has been renewed previously and the duration of each renewal;

(ii) any significant change to any information previously provided in any statement under this Schedule for the purposes of any application for the issue or renewal of the Chief Executive's authorization;

(iii) an assessment of the value of the information so far obtained pursuant to the Chief Executive's authorization;

(iv) the reason why it is necessary to apply for the renewal; and

(v) the proposed duration of the interception, Type 1 surveillance or Type 2 surveillance (as the case may be); and

(b) identify by name, rank and post the applicant and the officer of the Police Force approving the making of the application.

Part 5

Requirements for Statement for Application for Issue of Device Retrieval Warrant

26. Contents of statement supporting application (device retrieval warrant)

A statement supporting an application for the issue of a device retrieval warrant for the retrieval of any of the devices authorized to be used under a prescribed authorization is to—

(a) set out—

(i) the kind or kinds of the devices sought to be retrieved;

(ii) particulars of the premises or object from which the devices are to be retrieved, and the reason why the applicant considers that the devices are in or on such premises or object;

(iii) the estimated time required to complete the retrieval;

(iv) an assessment of the impact (if any) of the retrieval on any person; and

(v) the need for the retrieval; and

(b) identify by name, rank and post the applicant.

Part 6

Interpretation

27. Interpretation

(1) In this Schedule—

address (地址), in relation to a communication transmitted by a postal service, includes a postal box address;

authorizing officer (授權人員) means an officer of the Police Force designated under section 5(1) of this Schedule by the Chief Executive to be an authorizing officer;

Chief Executive's authorization (行政長官授權) means an authorization for interception, Type 1 surveillance or Type 2 surveillance issued or renewed under Division 1 of Part 2 of this Schedule;

communication (通訊) means—

(a) communication transmitted by a postal service; or

(b) communication transmitted by a telecommunications system;

conduct (行為) includes any act or omission, and any series of acts or omissions or of acts and omissions;

conveyance (運輸工具) means any vehicle, vessel, aircraft, hovercraft or other conveyance;

copy (文本)—

(a) in relation to any contents of a communication that have been obtained pursuant to a prescribed authorization for interception, means any of the following (whether or not in documentary form)—

(i) any copy, extract or summary of such contents;

(ii) any record referring to the interception which is a record showing, directly or indirectly, the identity of any person who is the sender or intended recipient of the communication; or

(b) in relation to any material that has been obtained pursuant to a prescribed authorization for covert surveillance, means any of the following (whether or not in documentary form)—

(i) any copy, extract or summary of the material;

(ii) any transcript or record made of the material;

court (法院)—

(a) means a court as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1); and

(b) includes a magistrate and a tribunal;

covert surveillance (秘密監察)—

(a) means surveillance conducted with the use of surveillance device for the purposes of a specific investigation or operation, if the surveillance—

(i) is conducted in circumstances where any person who is the subject of the surveillance is entitled to a reasonable expectation of privacy;

(ii) is conducted in a manner calculated to ensure that the person is unaware that the surveillance is or may be taking place; and

(iii) is likely to result in the obtaining of private information about the person; but

(b) does not include—

(i) any spontaneous reaction to unforeseen events or circumstances; or

(ii) any such surveillance that constitutes interception under this Schedule;

data surveillance device (數據監察器材)—

(a) means any device or program used to monitor or record the input of information into, or the output of information from, any information system by electronic means; but

(b) does not include an optical surveillance device;

device (器材) includes any instrument, apparatus and equipment;

device retrieval warrant (器材取出手令) means a device retrieval warrant issued or to be issued (as may be applicable) under section 14 of this Schedule;

directorate officer (首長級人員) means an officer of the Police Force not below the rank of chief superintendent of police;

emergency authorization (緊急授權) means an emergency authorization issued or to be issued (as may be applicable) under Division 2 of Part 2 of this Schedule;

enhancement equipment (增強設備), in relation to a device, means equipment used to enhance a signal, image or other information obtained by the use of the device;

function (職能) includes power and duty;

information system (資訊系統) has the meaning given by section 2(1) of the Electronic Transactions Ordinance (Cap. 553);

inspect (查察) includes listen to, monitor and record;

install (裝設) includes attach;

intercepting act (截取作為), in relation to any communication, means the inspection of some or all of the contents of the communication, in the course of its transmission by a

postal service or by a telecommunications system, by a person other than its sender or intended recipient;

interception (截取) means the carrying out of intercepting act in respect of a communication;

interception product (截取成果) means contents of a communication that have been obtained pursuant to a prescribed authorization for interception, and includes a copy of such contents;

journalistic material (新聞材料) has the meaning given by section 82 of the Interpretation and General Clauses Ordinance (Cap. 1);

listening device (監聽器材)—

(a) means any device used to overhear, listen to, monitor or record any conversation or words spoken to or by any person in conversation; but

(b) does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment;

maintain (維修), in relation to a device, includes—

(a) adjust, reposition, repair or service the device; and

(b) replace the device when it is faulty;

optical surveillance device (視光監察器材)—

(a) means any device used to record visually or observe any activity; but

(b) does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome the impairment;

postal article (郵遞品) has the meaning given by section 2(1) of the Post Office Ordinance (Cap. 98);

postal interception (郵件截取) means interception of a communication transmitted by a postal service, including postal articles;

postal service (郵政服務) means a postal service to which the Post Office Ordinance (Cap. 98) applies;

premises (處所) includes any place and, in particular, includes—

(a) any land or building;

(b) any conveyance;

(c) any structure (whether or not movable or offshore); and

(d) any part of any of the premises described in paragraph (a), (b) or (c);

prescribed authorization (訂明授權) means a Chief Executive's authorization or an emergency authorization;

protected product (受保護成果) means any interception product or surveillance product;

public place (公眾地方)—

(a) means any premises to which the public or a section of the public may or are permitted to have access from time to time, whether by payment or otherwise; but

(b) does not include any such premises that are intended for use by members of the public as a lavatory or as a place for taking a bath or changing clothes;

relevant authority (有關當局)—

(a) in relation to an application for the issue or renewal of a Chief Executive's authorization for interception or Type 1 surveillance, means the Chief Executive;

(b) in relation to an application for the issue or renewal of a Chief Executive's authorization for Type 2

surveillance, means the Chief Executive or an authorizing officer (as may be applicable);

(c) in relation to an application for the issue of an emergency authorization, means the Commissioner of Police; or

(d) in relation to an application for the confirmation of an emergency authorization, means the Chief Executive;

surveillance device (監察器材) means—

(a) a data surveillance device, a listening device, an optical surveillance device or a tracking device; or

(b) a device that is a combination of any 2 or more of the devices referred to in paragraph (a);

surveillance product (監察成果) means material that has been obtained pursuant to a prescribed authorization for covert surveillance, and includes a copy of the material;

telecommunications interception (電訊截取) means interception of a communication transmitted by a telecommunications system;

telecommunications service (電訊服務) has the meaning given by section 2(1) of the Telecommunications Ordinance (Cap. 106);

telecommunications system (電訊系統) has the meaning given by section 2(1) of the Telecommunications Ordinance (Cap. 106);

tracking device (追蹤器材) means any electronic device used to determine or monitor the location of any person or any object or the status of any object;

Type 1 surveillance (第1類監察) means covert surveillance other than Type 2 surveillance;

Type 2 surveillance (第2類監察), subject to subsections (3) and (4), means covert surveillance that—

(a) is conducted with the use of a listening device or an optical surveillance device by any person for the purpose of listening to, monitoring or recording words spoken or activity carried out by another person, if the person using the device—

(i) is a person by whom the other person intends, or should reasonably expect, the words or activity to be heard or seen; or

(ii) listens to, monitors or records the words or activity with the consent, express or implied, of a person described in subparagraph (i); or

(b) is conducted with the use of an optical surveillance device or a tracking device, if the use of the device does not involve—

(i) entry into or onto any premises without permission; or

(ii) interference with the interior of any conveyance or object, or electronic interference with the device, without permission.

(2) For the purposes of this Schedule, a person is not regarded as being entitled to a reasonable expectation of privacy within the meaning of paragraph (a)(i) of the definition of ***covert surveillance*** in subsection (1) in relation to any activity carried out by the person in a public place, but nothing in this subsection affects any such entitlement of the person in relation to words spoken, written or read by the person in a public place.

(3) For the purposes of this Schedule, any covert surveillance which is Type 2 surveillance is regarded as Type 1 surveillance if it is likely that any information which may be subject to legal professional privilege will be obtained by conducting it.

(4) An officer of the Police Force may apply for the issue or renewal of a prescribed authorization for Type 2 surveillance as if the Type 2 surveillance were Type 1 surveillance, and the provisions of this Schedule relating to the application and the prescribed authorization apply to the Type 2 surveillance as if it were Type 1 surveillance.

(5) For the purposes of this Schedule—

(a) a communication transmitted by a postal service is regarded as being in the course of the transmission if it is regarded as being in course of transmission by post under section 2(2) of the Post Office Ordinance (Cap. 98); and

(b) a communication transmitted by a telecommunications system is not regarded as being in the course of the transmission if it has been received by the intended recipient of the communication or by an information system or facility under the intended recipient's control or to which the intended recipient may have access, whether or not the intended recipient has actually read or listened to the contents of the communication.

(6) For the purposes of this Schedule, the contents of any communication transmitted by a telecommunications system include data produced in association with the communication.

Schedule 7

[r. 2]

Rules Relating to Requirement to Furnish Information and Produce Materials

1. Interpretation

In this Schedule—

authorized officer (獲授權人員) means—

(a) any police officer; or

(b) any person authorized in writing by the Secretary for Justice for the purposes of this Schedule.

2. Requirement to furnish information or produce material

(1) The Secretary for Justice may, for the purpose of an investigation into an offence endangering national security, make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to a particular person or to persons of a particular description.

(2) The Court of First Instance may, if on such an application it is satisfied that the conditions in subsection (4)(a), (b) and (d) or subsection (4)(a), (c) and (d) are fulfilled, make an order complying with subsection (3) in respect of the particular person, or persons of the particular description, to whom the application relates.

(3) An order under subsection (2) must—

(a) give particulars of the offence endangering national security that is under investigation;

(b) identify the particular person, or state the particular description of persons, in respect of whom the order is made;

(c) authorize the Secretary for Justice to require the person or persons in respect of whom the order is made to do either or both of the following—

(i) to answer questions or furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to the investigation;

(ii) to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to the investigation, or any material of a class that reasonably appears to the Secretary for Justice so to relate; and

(d) contain such other terms (if any) as the Court of First Instance considers appropriate in the public interest, but nothing in this paragraph is to be construed as authorizing the court to order the detention of any person in custody without that person's consent.

(4) The conditions referred to in subsection (2) are—

(a) that there are reasonable grounds for suspecting that the offence endangering national security under investigation has been committed;

(b) where the application relates to a particular person—that there are reasonable grounds for suspecting that the person has information, or is in possession of material, likely to be relevant to the investigation;

(c) where the application relates to persons of a particular description, that—

(i) there are reasonable grounds for suspecting that some or all persons of that description have such information or are in possession of such material; and

(ii) the offence endangering national security could not effectively be investigated if the application was required to relate to a particular person, whether because of the urgency of the investigation, the need to keep the investigation confidential or the difficulty in identifying a particular person who has relevant information or material;

(d) that there are reasonable grounds for believing that it is in the public interest that an order under subsection (2) should be made in respect of that person or those persons, having regard to—

(i) the seriousness of the offence endangering national security under investigation;

(ii) whether or not the offence endangering national security could be effectively investigated if an order under subsection (2) is not made;

(iii) the benefit likely to accrue to the investigation if the information is disclosed or the material obtained; and

(iv) the circumstances under which the person or persons may have acquired, or may hold, the information or material (including any obligation of confidentiality in respect of the information or material and any family relationship with a person to whom the information or material relates).

(5) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to answer questions or furnish information with respect to any matter that reasonably appears to an authorized officer to be relevant to an investigation, the Secretary for Justice may by one, or more than one, notice in writing served on that person require that person to attend before an authorized officer at a specified time and place, or at specified times and places, and answer questions or furnish information with respect to any matter that reasonably appears to the authorized officer to be relevant to the investigation.

(6) Where an order under subsection (2) authorizes the Secretary for Justice to require a person to produce any material that reasonably appears to the Secretary for Justice to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to the Secretary for Justice so to relate, the Secretary for Justice may by one, or more than one, notice in writing served on that person require that person to produce at a specified time and place, or at specified times and places, any specified material that reasonably appears to the Secretary for Justice so to relate or any material of a specified class that reasonably appears to the Secretary for Justice so to relate.

(7) A notice in writing imposing a requirement on a person under subsection (5) or (6) must—

(a) state that a court order has been made under this section and include—

(i) the date of the order;

(ii) the particulars of the offence endangering national security under investigation;

(iii) where the order is made in respect of that particular person, a statement to that effect;

(iv) where the order is made in respect of persons of a particular description and that person is of that particular description, a statement to that effect;

(v) a statement of the authorization given to the Secretary for Justice by the order; and

(vi) a statement of any other terms of the order relevant to that person;

(b) have annexed to it a copy of the order made under this section, but there may be excluded from such copy—

(i) any reference in the order to a particular person other than that person, or to persons of a particular description not including that person; and

(ii) any details in the order that relate only to such particular person or persons of a particular description; and

(c) set out or have annexed to such notice the provisions of subsections (8), (9) and (10) and section 5 of this Schedule.

(8) An authorized officer may photograph or make copies of any material produced in compliance with a requirement under this section.

(9) A person must not under this section be required to furnish any information or produce any material relating to items subject to legal professional privilege, except that a lawyer may be required to furnish the name and address of the lawyer's client.

(10) An order under subsection (2), and a notice in writing imposing a requirement under subsection (5) or (6), may be made in relation to information held by, and material in the possession of any Government department or any body specified by the Chief Executive by notice in the Gazette.

(11) A person is not excused from furnishing information or producing any material required under this section on the ground that to do so—

(a) might tend to incriminate the person; or

(b) would breach an obligation as to secrecy or another restriction on the disclosure of information or material imposed by statute or otherwise.

(12) A statement by a person in response to a requirement imposed by virtue of this section may not be used against the person in criminal proceedings against the person except as follows—

(a) in evidence in proceedings under subsection (14) or section 36 of the Crimes Ordinance (Cap. 200); or

(b) for the purpose of impeaching the person's credibility in proceedings in respect of any offence where in giving evidence the person makes a statement inconsistent with it.

(13) Any person who without reasonable excuse fails to comply with a requirement imposed on the person under this section commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 1 year.

(14) Any person who, in purported compliance with a requirement under this section—

(a) makes a statement that the person knows to be false or misleading in a material particular; or

(b) recklessly makes a statement that is false or misleading in a material particular,

commits an offence and is liable on conviction on indictment to a fine of $500,000 and to imprisonment for 3 years.

(15) Where an order under subsection (2) has been made, the Secretary for Justice, or a person authorized in writing by the Secretary for Justice for the purpose of this subsection, may, after satisfying any conditions that may be prescribed by rules of court in this respect, obtain a copy of the order; but subject to the foregoing part of this subsection and to subsection (7)(b), no person is entitled to obtain a copy of the order or any part of the order.

(16) Where a requirement imposed on a person under this section relates to material which consists of information recorded otherwise than in legible form—

(a) the requirement is to have effect as a requirement to produce the material in a form in which it can be taken away; and

(b) an authorized officer may, by notice in writing served on that person, require that person to produce at a specified time and place, or at specified times and places, the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the requirement to produce the material in the form in which it is recorded.

(17) An application for the discharge or variation of an order made under this section may be made by any person on whom a requirement is imposed under the order.

3. Order to make material available

(1) The Secretary for Justice or an authorized officer may, for the purpose of an investigation into—

(a) an offence endangering national security; or

(b) the proceeds of an offence endangering national security of any person who has committed or is suspected of having committed an offence endangering national security,

make an ex parte application to the Court of First Instance for an order under subsection (2) in relation to particular material or to material of a particular description, whether in Hong Kong or, in the case of an application by the Secretary for Justice, elsewhere.

(2) Subject to subsection (5), the court may, if on such an application it is satisfied that the conditions in subsection (4)(a), (c) and (d) or subsection (4)(b), (c) and (d) are fulfilled, make an order that the person who appears to the court to be in possession or control of the material to which the application relates must—

(a) produce the material to an authorized officer for the officer to take away; or

(b) give an authorized officer access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) must be 7 days unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are—

(a) where the investigation is into an offence endangering national security, that there are reasonable grounds for suspecting that the offence endangering national security has been committed;

(b) where the investigation is into a person's proceeds of an offence endangering national security—

(i) that the person has committed an offence endangering national security, or that there are reasonable grounds for suspecting that the person has committed an offence endangering national security; and

(ii) that there are reasonable grounds for suspecting that the person has benefited from an offence endangering national security;

(c) that there are reasonable grounds for believing that the material to which the application relates—

(i) is likely to be relevant to the investigation for the purpose of which the application is made; and

(ii) does not consist of or include items subject to legal professional privilege;

(d) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, having regard to—

(i) the benefit likely to accrue to the investigation if the material is obtained; and

(ii) the circumstances under which the person in possession or control of the material holds or controls it, as the case may be.

(5) Where an application under subsection (1) relates to material of a particular description, an order under subsection (2) may be made only where an application in relation to particular material is not reasonably practicable.

(6) Where a court makes an order under subsection (2)(b) in relation to material on any premises it may, on the same or a subsequent application of an authorized officer, order any person who appears to it to be entitled to grant entry to the premises to allow an authorized officer to enter the premises to obtain access to the material.

(7) An application for the discharge or variation of an order made under subsection (2) or (6) may be made by any person who is subject to the order.

(8) Where material to which an application under this section relates consists of information recorded otherwise than in legible form—

(a) an order under subsection (2)(a) is to have effect as an order to produce the material to an authorized officer in a form in which it can be taken away by the officer; and

(b) an order under subsection (2)(b) is to have effect as an order to give an authorized officer access to the material in a form in which it is visible and legible.

(9) Where an order made under subsection (2)(a) relates to information recorded otherwise than in legible form, an authorized officer may, by notice in writing, require the person to produce the material in a form in which it is visible and legible and can be taken away, and may by like notice release the person from any obligation under the order to produce the material in the form in which it is recorded.

(10) An order under subsection (2)—

(a) must not confer any right to production of, or access to, items subject to legal professional privilege; and

(b) may be made in relation to material in the possession or control of any Government department or any body specified by the Chief Executive by notice in the Gazette.

(11) A person is not excused from producing any material in relation to which an order under subsection (2) is made on the ground that to do so—

(a) might tend to incriminate the person; or

(b) would breach an obligation as to secrecy or another restriction on the disclosure of information or material imposed by statute or otherwise.

(12) Any person who without reasonable excuse fails to comply with an order made under subsection (2) commits an offence and is liable on conviction on indictment to a fine of $100,000 and to imprisonment for 1 year.

(13) An authorized officer may photograph or make copies of any material produced under this section.

4. Disclosure of information obtained under section 2 or 3 of this Schedule

(1) Where any information subject to an obligation of secrecy under the Inland Revenue Ordinance (Cap. 112) has been obtained from the Commissioner of Inland Revenue or any officer of the Inland Revenue Department under or by virtue of section 2 or 3 of this Schedule, that information may be disclosed by any authorized officer to the Secretary for Justice for the purposes of—

(a) any prosecution of an offence endangering national security;

(b) an application for a confiscation order under section 9 of Schedule 3 or an application for a forfeiture order under section 13 of Schedule 3; or

(c) an application for a restraint order or charging order under section 6 of Schedule 3,

but may not otherwise be disclosed.

(2) Subject to subsection (1), information obtained by any person under or by virtue of section 2 or 3 of this Schedule may be disclosed by any authorized officer—

(a) to the Department of Justice and the Hong Kong Police Force; and

(b) where the information appears to the Secretary for Justice to be likely to assist any corresponding person or body to discharge its functions—to that person or body.

(3) Subsection (2) is without prejudice to any other right to disclose information obtained under or by virtue of section 2 or 3 of this Schedule that may exist apart from subsection (2).

(4) In this section—

corresponding person or body (相應的人員或機構) means any person who or body which, in the opinion of the Secretary for Justice, has under the law of a place outside Hong Kong functions corresponding to any of the functions of any body mentioned in subsection (2)(a).

5. Offence of prejudicing investigation

(1) Where an order under section 2 or 3 of this Schedule has been made or has been applied for and has not been refused, a person who, knowing or suspecting that the investigation in relation to which the order has been made or applied for is taking place—

(a) without lawful authority or reasonable excuse makes any disclosure intending to prejudice the investigation or makes any disclosure being reckless as to whether the disclosure will prejudice the investigation; or

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of any material—

(i) knowing or suspecting that the material is likely to be relevant to the investigation; and

(ii) intending to conceal the facts disclosed by the material from persons carrying out the investigation,

commits an offence.

(2) Where a person has been arrested in connection with an investigation specified in subsection (1), that subsection does not apply as regards any disclosure in respect of the investigation made after such arrest.

(3) A person who commits an offence under this section is liable on conviction on indictment to a fine and to imprisonment for 7 years.

6. Rules of court

For the rules of court applicable to any application made under this Schedule, reference may be made to the rules of court applicable to similar applications under the laws of Hong Kong (in particular, the Rules of the High Court made under section 30 of the Organized and Serious Crimes Ordinance (Cap. 455)) with the necessary modifications.

[SIGNED ON THE CHINESE TEXT]
Chief Executive

6 July 2020